

No. 12023

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United States  
Court of Appeals  
for the Ninth Circuit

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UNITED STATES OF AMERICA,  
Appellant,  
vs.  
HONOLULU PLANTATION COMPANY,  
Appellee.  
and  
HONOLULU PLANTATION COMPANY,  
Appellant,  
vs.  
UNITED STATES OF AMERICA,  
Appellee.

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Transcript of Record

(In Four Volumes)  
VOLUME IV  
(Pages 1249 to 1621)

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FILED

DEC 31 1948

Appeal from the United States District Court  
for the District of Hawaii

PAUL P. O'BRIEN,  
CLERK



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(Testimony of John Francis Child, Jr.)

Q. I show you Exhibit 2-B. Will you identify that as [1983] tax map showing the two kuleanas involved?      A. Yes.

Q. Now, in relation to this particular tract, where is the area you called the harbor view tract?

A. It's across the Kam Highway.

Q. It's almost directly across, is it not, from this land?

A. It was originally a portion of the same.

Q. Did you make any investigation of these two areas to find out what they did actually sell for when they were purchased by the Honolulu Plantation?

A. I got that figure. I don't recall it at the moment.

Q. Do you know the date they were purchased?

A. It was in the early nineteen hundreds. Don't remember just what the date was.

Q. Well, the land is more or less valuable now than it was in 1912?

A. You mean the land in general or these kuleanas values?

Q. Land in that vicinity.

A. Land in the general vicinity, to the best of my knowledge, is probably more valuable today.

Q. Now, isn't it a fact that the owners of the surrounding area are always very desirous of purchasing kuleanas within the areas?

A. That is true. [1984]

Q. And the highest and best use for these kuleanas would be a sale to the surrounding owner?

(Testimony of John Francis Child, Jr.)

A. I consider it so.

Q. Don't you consider, bearing in mind the condition prior to the Government taking in these lands involved in this suit, that the surrounding owner would have paid more than the figure you have placed as a value of these kuleanas for the kuleanas?

A. I didn't consider that he would pay more for the reason that he would have to desire them for particular use, which use I considered.

Q. If it was shown that the kuleanas were actually sold in 1912 for \$250, would that make any difference?

A. No. I wouldn't consider that as the basis for valuing them as of the date of this appraisal because it is, I think, common for plantation operators and other persons desiring kuleanas to operate in connection with other lands that they will pay nuisance value for them, which are highly speculative and rather difficult to determine.

Q. Don't you think the Coopers, who own this land, would have been willing to pay more than \$75 for L.C.A. 5669 at .107 acres right in the middle of their holding?

A. I think they would have considered what they were going to use the property for, and that from an economic standpoint they would first try to obtain it at that price. Any [1985] other premium they might pay would be highly speculative.

The Court: That's 2-B, Civil 521?

Q. Now, is that a very nice location for a house?

(Testimony of John Francis Child, Jr.)

A. It would be a very small house.

Q. Do you know the kuleanas have rights of way, don't you?

A. They have an indefinite right of way over adjacent property.

Q. And so anyone buying that would have a right of way, ingress and egress?

A. That is true.

Q. And in Hawaii, as a matter of fact, many people live on similar kuleanas, do they not?

A. Usually there are independent small kuleanas, certain home sites. However, I considered that this one was a little small for that purpose.

Q. But the use of kuleanas in Hawaii as home sites with a right of way is rather expensive, is it not?

A. That is true.

Q. And you would consider that in an open market this would bring no more than \$75 to it?

A. Because of its small size and inability for people in a general market, in my opinion, to use it; it is most valuable to the surrounding property and would be paid for on that basis. [1986]

Q. Now, with this surrounding property, if sold, would it be for more or less on a sub-division basis than the the property mauka of the highway which you said was part of the tract, would it sell for less or more?

A. It may have portions sold for prices exceeding or less, depending on the quality of the land, the method of subdivision and, of course, certain costs would have to be deducted.

(Testimony of John Francis Child, Jr.)

Q. Well, as a matter of fact, the McGrew Point, in absence of the Government handling it, considering it before condemnation, was very desirable property from the subdivision standpoint, was it not?

A. It was desirable property. I don't know whether I'd put the accent on that, the adjective "very."

Q. How about other areas that were available for sale around Pearl Harbor, were they not readily sold?

A. Property around Aiea and certain other places around Pearl Harbor were readily sold and desirable.

Q. Now, this other strip that you referred to, I believe it's 2-A or 2-B—

A. A.

Q. —that I referred to as the L.C.A.—

A. It's 2-A.

Q. —5669, cane area, .47 acres, does that front on the water? [1987]

A. That fronts on the—not the harbor frontage but there's a stream which runs down through here.

The Court: What? A stream?

The Witness: Stream.

Q. What was it used for prior to the Government taking?

A. A portion of it probably was used when Honolulu Plantation Company had a lease on other area of McGrew Point in connection with cultivation of cane. The lower portion of it was in reeds

(Testimony of John Francis Child, Jr.)

and I don't believe it had been used for many years.

Q. Did you make any investigation of the plantation, how much had been used for cane?

A. I did not. I did, however, estimate the area of dry land by taking a Navy surveyor.

The Court: You will have to speak louder.

A. By taking a Navy surveyor down there and having an estimate made of that area which was arable.

Q. Well, as a matter of fact, that area, most of it, could have been drained and used for cane, could it not?

A. At considerable cost, yes.

Q. Well, as a matter of fact, it had been drained and was used for cane prior to the taking, was it not?

A. I don't have any knowledge of portions of it being used for cane.

Q. And you made no investigation? [1988]

A. I did not.

Q. In connection with the area described, as shown, rather, on Exhibit 2-A, 2.732, or 37, acres of land, I show you Exhibit 2-A. Do you recall that?

A. This piece here, I do.

Q. That's what you placed a value of \$14,000 on, \$14,100?

A. That's correct.

Q. In arriving at that opinion I understood you to say that you took into consideration sales in the harbor view tract, is that correct?

A. That's correct.

Q. I show you Exhibit 8, and would you point

(Testimony of John Francis Child, Jr.)

out on that the location of the land shown on 2-A, Exhibit 2-A, that I also handed you?

A. Roughly, it is probably right in here. (Indicating on exhibit)

Q. You are pointing to an area of land shown under 535, are you not?      A. Yes.

Q. The figure is 535. Where is the harbor view tract on this?

A. The harbor view tract is approximately here. (Indicating on exhibit)

Q. Now, were those the only sales that you took into [1989] consideration, those of the harbor view tract?

A. I considered those the most comparable sales to this property.

Q. Did you investigate any other sales?

A. I did.

Q. Where?

A. In Halawa Ridge and Aiea Heights.

Q. Are not some of those areas closer to this property?

A. Some of the area is perhaps a little bit closer but not as comparable, being view property on the heights.

Q. Is this view property?

A. It isn't, it is not.

Q. Now, as a matter of fact, this property fronts on a Government road, does it not?

A. That's correct.

Q. And if it was subdivided that road would be usable for the property as a means of access?



(Testimony of John Francis Child, Jr.)

A. I considered it so.

Q. What did you mean when you said this property was an irregular shape? It looks like a rather regular shape as shown on this map.

A. The property is not wide enough at the upper end. As you can see, it follows the railroad right of way and becomes narrower at the upper end. It is not wide enough to lend itself to the most economic type of lot. The lots would have to be [1990] long and narrow.

Q. Might they not be long and wide?

A. They could be. The prices and the highest values have been of regular shaped small lots. Used for comparison.

Q. How many sales of this harbor view tract did you consider?

A. The entire tract with the exception of five lots were sold out. I considered the record on all of those sales.

Q. As I understood, you said the Honolulu Plantation purchased some for 20 cents?

A. That's correct.

Q. Were those interior or lots on the main highway?

A. They were lots fronting on the old Moanalua road as opposed to Kam highway.

Q. Do you know what the lots on the main highway were sold at?

A. Original sales price was 25 cents per square foot.

(Testimony of John Francis Child, Jr.)

Q. Well, what sales did you consider? Did you consider any of 25 cents?

A. I considered that the subject property was more comparable to the property fronting on the old Moanalua road and gave greater weight to the values along that road.

Mr. Vitousek: That's all, if the Court please.

The Court: Redirect?

Mr. Rathbun: No, your Honor. [1991]

The Court: You are excused.

(Witness excused.)

The Court: Call your next witness.

Mr. Rathbun: We have no other witnesses, if your Honor please. And at this time I want to offer in evidence these letters which have been marked for identification, particularly the exhibits marked for identification from 2 to 15, both inclusive.

Mr. Vitousek: Well, if the Court please, I think they ought to be offered separately. We are going to offer objections to some and there will be different reasons for different objections. And unless the Court desires to take them up separately—

Mr. Rathbun: You can take them by order and object to them as they stand there. There they are. (Handing documents marked for identification to Mr. Vitousek)

The Court: Just a moment until I get my notes before me.

Mr. Rathbun: If your Honor please, I'll call your attention to it. November 29, 1940, is the



letter from Brewer to the Damon Estate, marked Exhibit 2 for identification. That's the letter which was attached to the proposed lease which was identified, and the proposed lease is No. 3. We offer those in evidence for reasons which are obvious.

The Court: What are your objections to those two?

Mr. Vitousek: Just a minute. I'll check this one, if [1992] the Court please. If the Court please, there is no objection to these.

The Court: Very well, they may become Government's Exhibits—

The Clerk: No. 2 is A, No. 3 is B.

(The documents previously marked as U. S. Exhibits 2 and 3 were received in evidence as U. S. Exhibits A and B.)

[Printer's Note: U. S. Exhibits A and B are set out in full at pages 1567-1568 of this printed Record.]

Mr. Rathbun: We offer Exhibit No. 4 for identification, being a letter dated May 5, 1941.

Mr. Vitousek: No objection, if the Court please.

The Court: Very well.

(The document previously marked as U. S. Exhibit No. 4 was received in evidence as U. S. Exhibit C.)

[Printer's Note: U. S. Exhibit C is set out in full at page 1578 of this printed Record.]

Mr. Rathbun: We offer Exhibit No. 5 for identification.

Mr. Vitousek: No objection, if the Court please.

The Court: It may be received.

(The document previously marked as U. S. Exhibit No. 5 was received in evidence as U. S. Exhibit D.)

[Printer's Note: U. S. Exhibit D is set out in full at page 1580 of this printed Record.]

Mr. Rathbun: I offer Exhibit 6 for identification.

Mr. Vitousek: If the Court please, we wish to object to the introduction in evidence of Exhibit 6 for identification because it is incompetent, irrelevant and immaterial, it already having been shown there was an exchange of letters forming a part of what I believe is Exhibit 9-K which constituted [1993] the agreement for a lease of the areas in question, so-called Damon Estate land. And that having been determined by the parties, having an offer and a complete acceptance, that it could not be varied by the trustees sending any subsequent letter asking for changes. It is immaterial.

The Court: You have introduced Exhibit 18—

Mr. Vitousek: The answer to this letter.

The Court: —the answer to this letter.

Mr. Vitousek: As I called to the Court's attention, we didn't know how to proceed because in those conditions they offered them for identification without offering them in evidence. We closed our case. We had to have some answer to these letters.

The Court: Well, if the answer is in, I had better have the original letter. So I am going to overrule your objection, and Exhibit 6 for identification may be received as an exhibit.

The Clerk: Exhibit E.

(The document previously marked as U. S. Exhibit No. 6 for identification was received in evidence as U. S. Exhibit E.)

[Printer's Note: U. S. Exhibit E is set out in full at page 1581 of this printed Record.]

Mr. Vitousek: May we have an exception?

The Court: You may have an exception. Next is Exhibit 7?

Mr. Rathbun: Exhibit No. 7.

The Court: December 16, 1941, letter by the company to the Damon Estate. [1994]

Mr. Rathbun: Yes.

Mr. Vitousek: If the Court please, this particular communication has nothing to do with anything in the matter in issue in this case. It's simply a statement that the land—that there would be cooperation in planting and growing of food crops. I think at that time the war was on.

Mr. Rathbun: It shows the unsettled state of a situation in an unclaimed lease, which we claim, of course, they did not have.

Mr. Vitousek: If the Court please, if you had a lease you had to change the uses of, you would have written it anyway. This was a war condition and writing in form might be needed for growing food stuffs.

The Court: Well, whether it does or does not bear on the issue can be determined in relation to the study to be made of the lease. I am going to admit it and you may have an exception.

Mr. Rathbun: That's true of all of these let-

ters. They are offered for the purpose of showing the unsettled condition of a lease that they claimed they had positively in force and effect.

The Court: U. S. 7 for identification may become—

The Clerk: U. S. Exhibit F.

(The document previously marked as U. S. Exhibit No. 7 for identification was received in evidence as U. S. Exhibit F.) [1995]

[Printer's Note: U. S. Exhibit F is set out in full at page 1584 of this printed Record.]

The Court: Exception granted.

Mr. Rathbun: I offer in evidence Exhibit No. 8 for identification.

Mr. Vitousek: Now, if the Court please,—

The Court: Is that the famous Merriam letter?

Mr. Vitousek: —this and 9 are the so-called Merriam letters, if the Court please. The receipt of these letters in evidence is objected to. There is no showing that Mr. Merriam had any authority in the premises, particularly showing as to the contrary from Mr. Spalding's testimony, from the showing of the powers of attorney, that the best it could be taken as is nothing more than a possible expression of Mr. Merriam's. It's certainly not binding on the company and he could not vary the wording or the agreement that we claim was consummated by the exchange of the first two letters. In addition to that, it was clearly shown as to the condition of his health.

The Court: I am going to overrule your objec-

tion to both and both may be received and you may have an exception on each one.

(The documents previously marked U. S. Exhibits 8 and 9 for identification were received in evidence as U. S. Exhibits G and H respectively.)

[Printer's Note: U. S. Exhibits G and H are set out in full at pages 1586-1588 of this printed Record.]

Mr. Rathbun: The next one is Exhibit No. 10 for identification, being the letter of January 3, 1943, written by [1996] Mr. Spalding to Vice Admiral Ghormley.

Mr. Vitousek: If the Court please, we object to the receipt in evidence of this document as incompetent, irrelevant and immaterial. It has nothing to do with the issues involved in this case.

Mr. Rathbun: The special purpose of this letter, if your Honor please, is the discussion by Mr. Spalding, the President of C. Brewer and Company, the agent for Honolulu Plantation, and its attorney-in-fact, in regard to the nature of his claim, that is, the claim of the Honolulu Plantation Company, showing that it is based upon a loss of profits. It goes to the credibility.

Mr. Vitousek: If the Court please, that is not shown because it shows in the wording of the letter "damage to the enterprise and the business."

Mr. Rathbun: But he defines what it is in that letter.

The Court: It may be received. You may have an exception.

The Clerk: I.

(The document previously marked U. S. Exhibit No. 10 for identification was received in evidence as U. S. Exhibit I.)

[Printer's Note: U. S. Exhibit I is set out in full at page 1590 of this printed Record.]

Mr. Rathbun: I offer in evidence Exhibit No. 11.

The Court: The reply?

Mr. Rathbun: The reply, for the reason that it is a reply.

Mr. Vitousek: If the Court please, the same objection. [1997]

The Court: Same ruling, same exception. It may become—

The Clerk: J.

(The document previously marked U. S. Exhibit No. 11 for identification was received in evidence as U. S. Exhibit J.)

[Printer's Note: U. S. Exhibit J is set out in full at page 1603 of this printed Record.]

Mr. Rathbun: The next series, beginning with 12, pertain to the contract of sale. I offer 12 in evidence.

Mr. Vitousek: We have no objection.

The Court: Very well.

Mr. Rathbun: And you have no objection to 13, 14 and 15?



Mr. Vitousek: No.

Mr. Rathbun: Is that right?

Mr. Vitousek: Right.

The Court: They may be received. U. S. 12 for identification becomes—

The Clerk: K.

(The document previously marked U. S. Exhibit No. 12 for identification was received in evidence as U. S. Exhibit K.)

[Printer's Note: U. S. Exhibit K is set out in full at page 1605 of this printed Record.]

The Court: U. S. 13.

The Clerk: L.

(The document previously marked U. S. Exhibit No. 13 for identification was received in evidence as U. S. Exhibit L.)

[Printer's Note: U. S. Exhibit L is set out in full at page 1608 of this printed Record.]

The Court: U. S. 14. [1998]

The Clerk: M.

(The document previously marked U. S. Exhibit No. 14 for identification was received in evidence as U. S. Exhibit M.)

[Printer's Note: U. S. Exhibit M is set out in full at page 1609 of this printed Record.]

The Court: Fifteen. Fifteen consists of two documents, one a letter, and the other a resolution attached to the letter.

The Clerk: You want to mark them N-1 and N-2?

The Court: I think perhaps that is advisable so that it doesn't get lost.

The Clerk: The letter is N-1 and the resolution is N-2.

(The documents previously marked as U. S. Exhibits 15 for identification were received in evidence as U. S. Exhibits N-1 and N-2.)

[Printer's Note: U. S. Exhibits N-1 and N-2 are set out in full at pages 1610-1613 of this printed Record.]

The Court: Very well.

Mr. Rathbun: Now, I think that's all. But for protection purposes I offer any other document that we have had identified except the claim to Congress, which has not yet been introduced in evidence. I think that's all.

Mr. Vitousek: I certainly must object to such a blanket offer, if there is anything else here.

Mr. Rathbun: I am only holding it open so I can check. That's all.

Mr. Vitousek: I have no objection to it being left open, if the Court please, but I think whatever is being offered should be particularly called to the Court's attention. And [1999] I have no objection to holding it open until some future time.

The Court: There is no other one except Exhibit 1 for identification?

Mr. Rathbun: Now that will remain open until we hear. With that reservation we are closed.



The Court: Very well. So the only two things remaining, to repeat, are to clear up U. S. 1 for identification and as to when it is cleared up you have Mr. Spalding back for further cross.

Mr. Rathbun: May or may not.

The Court: May or may not. In event, he is due back to give you an answer about this pension business. Since this Congressional claim was sent from Washington, you say Saturday by air mail, I should expect that it should be here today.

Mr. Vitousek: It ought to be here. Mail is frequently uncertain, but it ought to be here either today or very shortly.

The Court: Well, supposing we meet tomorrow morning at nine o'clock on the assumption that it will be here, and we can clear up the remaining few details. You will certainly know by this afternoon whether it is here or not, will you not?

Mr. Vitousek: May I ask Mr. Kay regarding this pension? I don't know whether that will be cleared up tomorrow or not. Mr. Kay thinks that the pension matter will take more than one day.

The Court: Well, on that particular thing, listening to questions and answers, I am inclined to think that Mr. Spalding may be inclined to give Mr. Rathbun more than he asked for. And limiting it to exactly what he asked for—

Mr. Rathbun: I'm not too much interested in it if it's going to require a lot of delay and research.

Mr. Vitousek: As I understood it, if the Court please, the request was a list of the employees and

the amounts to be paid as employees, to receive the pensions, and the amounts they were to be paid.

Mr. Rathbun: The amount what is to be taken, actually taken out of this 400,000 was what we asked for.

The Court: That's right. And the witness said he'd go one step further and show it as actually paid.

Mr. Rathbun: Some of it.

The Court: Some of it. Well, say what is today? Judge Metzger has a matter on Friday. Do you think we can make headway if we pass the day and set the 16th for the clean-up day?

Mr. Vitousek: Well, if I may suggest, we can hold tomorrow open. If they come, we can get it cleaned up. But I wouldn't want to say it will be here certain, if the Court desires to hold the morning open and if they do come—

The Court: Well, I'll be here and I have nothing on except this matter for tomorrow morning.

Mr. Vitousek: I can notify Mr. Rathbun if they are here, and we can go ahead.

The Court: All right, let's schedule it as expected for tomorrow morning at nine. However, between 8 and 9 in the morning, if there is some reason why we will not make advantageous progress, if you will notify me we can adjust the matter.

Mr. Vitousek: Anticipating perhaps a little—I don't know how the Court is going to handle this, whether with argument or briefs. But if argument, I wouldn't want to start in tomorrow if we

are cleaning it up. I'd rather have a day or so to clean this all up.

The Court: Well, on that particular point, I think I'd rather have briefs on this particular case. It is so complicated anyway. Frequently argument goes in one ear and out the other, and you don't remember and it's going to be months, I'm afraid, before the case is digested fully enough to render a decision. So I think written briefs would be more helpful. What is your reaction to that, Mr. Rathbun?

Mr. Rathbun: Well, with the understanding that it will be done within a period of, say, six weeks, that will be satisfactory to me. Otherwise, I'd like to, if we can't do it in that time, to argue it orally. I have a reason for that. I am severing my connection with the Government at the end of this case. I want to be back by March 1st at least.

Mr. Vitousek: As far as we are concerned, I certainly [2002] wouldn't want the briefs to extend over six weeks myself.

Mr. Rathbun: I'd rather not have in the record what I said about resigning.

The Court: All right. Strike that out. If I require briefs of you gentlemen, you are going to first require the transcript, no doubt.

Mr. Vitousek: Well, it would be better, but I am finding it difficult. Did you order a transcript?

Mr. Rathbun: We are still waiting.

The Court: I appreciate your position, Mr. Rathbun and I will do everything to cooperate

with you, and yet I have a feeling that briefs will be more helpful than oral argument. I am just wondering if, when the transcript is available, especially since Mr. Driver has sat with you through the case, whether or not he and other attorneys in the department might not be able to file the brief.

Mr. Rathbun: I don't know. Mr. Driver will have to speak for himself about that.

The Court: I'd be reluctant to hold you just for that matter of a brief.

Mr. Rathbun: I think this record could be gotten out if he sits on it and works on it.

The Court: I know but the reporter is only human and he has another transcript or two. Well, let's all of us think about that matter, and my reaction, my preference is for briefs. [2003] You want to make outlines of what your briefs will contain, and I will listen to you but I would like not voluminous briefs either but concise to the point briefs.

Mr. Vitousek: If there would be argument, I would prefer to argue after the briefs are in and it would freshen my mind, and not argue now and then file some briefs at some distant future period.

The Court: Well, I don't think there is any definite position any of us can take on it at this moment. Let's sleep on it a little while and see how it looks tomorrow, and possibly wind up this case. Until nine o'clock tomorrow, unless before tomorrow at nine I hear from you to the contrary

that it should be a later date, the case is adjourned.

(The Court adjourned at 11:30 a.m.) [2004]

Honolulu, T. H., January 15, 1947

The Clerk: Civil No. 514, United States of America versus 257.654 acres of land, more or less, and others; case called for further trial.

The Court: The parties being ready, I believe the only things remaining are the possible rebuttal evidence, which we haven't considered, the pension plan and the Congressional reference claim. Have you those things at hand?

Mr. Vitousek: I am ready to proceed. if the Court please.

The Court: Very well.

Mr. Vitousek: If the Court please, a request was made of Mr. Spalding for the pension, the list of the proposed pensions, and I have it with me and it has been submitted to the Government attorneys, a proposed payment of pensions, which does not include the month of January.

The Court: This year?

Mr. Vitousek: This year. The payments for January being due and payable on the 15th day of January, which is today. And I am informed it would amount to approximately \$3,000. This payment is recommended by the manager and must go to the directors in San Francisco for approval. It shows a total on the sheet for a period commencing after the current payments of \$397,701.10. I



am informed by the attorneys for the Government that they will not require this to go into evidence. It's [2005] quite a lengthy document and has a lot of names and will fill up the record unnecessarily.

The Court: Very well.

Mr. Rathbun: We have seen it.

The Court: All right.

Mr. Vitousek: Now, if the Court please, in regard to the other matter which was left open, the Court made an order that we produce what was termed a claim before Congress. Now, I wish to state that I personally was not in that case and knew nothing about the proceedings other than what I have been informed, as it is shown in the record here and as I was informed. Mr. John J. Courtney, an attorney in Washington, D. C., handled this matter as an attorney for the Honolulu Plantation Company. After the Court made its order, I endeavored to get Mr. Courtney by telephone, was unable to do so, so I sent him a wire Friday asking him to talk to me over the telephone and to send here the report or claim or whatever it was as filed. I received yesterday afternoon by air mail, special delivery, a document with an accompanying letter. In view of the fact that I have had nothing to do with this matter, and getting my information from Mr. Courtney, I'd like to read the letter. It is self-explanatory. It is addressed to myself, dated January 11, 1947, and reads as follows:

“Dear Roy:

“In response to your cable received this morning, I am [2006] transmitting herewith an exact and complete copy of the brochure filed by Honolulu Plantation Company at the time of the introduction of H.R. 2688 in the 79th Congress. An identical copy was furnished to each of the Government agencies at the same time, to wit, Justice, Army, Navy, Interior, Federal Works Agency and the Budget Bureau. There were no changes made in it, and it is the same instrument which was filed with the House Committee on Claims of the 79th Congress and mentioned in House Report 1313 recommending passage of the Bill as amended, and making specific findings of fact in connection with the representations of the Government departments as furnished to the Committee. I trust that these reach you promptly. By these I mean I am depositing a total of four copies in different mails today to insure delivery. I shall stand by for your call.

With Kindest personal regards,

Sincerely yours

JOHN J. COURTNEY.”

I was able to talk to Mr. Courtney by trans-Pacific telephone on Monday of this week and at that time he informed me he had mailed these documents and that no changes had been made. Upon examining the report he mentions, apparently the document was introduced before the hearings referred to as Exhibit 1.

Now, I make that statement because whether it is a claim [2007] or a brochure, apparently it is the document filed. The other day I borrowed the document which is marked Exhibit 1 for identification, compared it with a document I had which came to me from the plantation office, and found it identical. I have compared the document with which I compared Exhibit 1 with the one as sent by Mr. Courtney and found it identical. So I think I can make this statement that the document Mr. Courtney sent me is identical with Exhibit 1 for identification. That is, I didn't compare it with that document but by comparing it as we did, I think it is safe to say they are identical.

The Court: Mr. Rathbun, now that this copy, represented as accurate of what was filed by this company with the last Congress, is here, have you had an opportunity to compare it with Exhibit 1 for identification?

Mr. Rathbun: I haven't, but they have.

The Court: Do you want such an opportunity?

Mr. Rathbun: Well, I have offered the document that is marked Government Exhibit 1. They now say that that is the document that was filed, according to Mr. Courtney. There is nothing further for us to do.

Mr. Vitousek: If the Court please, if it is being offered, I want to interpose an objection to its being offered, for the record.

The Court: Well, before we get there, let's make sure we are straightened out. The situation is that when all is [2008] said and done, the company is



admitting that Exhibit 1 for identification is an accurate copy of what was filed with the last Congress in relation to this company's claim to Congress?

Mr. Vitousek: That is correct. What they called Exhibit 1 was introduced for the Committee.

The Court: All right. Now, I think that straightens out the confusion that existed insofar as that document is concerned. Now, where does that get us?

Mr. Rathbun: I offer the document marked Government Exhibit 1 for identification in evidence in this case, if your Honor please.

Mr. Vitousek: Now, if the Court please—

Mr. Rathbun: On the grounds that it goes to the credibility of the witnesses in this case, and also it constitutes, when read as a whole, an admission against interest insofar as the interest they are making in this Court is concerned, of the claim.

Mr. Vitousek: We object to the introduction of the document upon the grounds that it is incompetent, irrelevant and immaterial and does not do what counsel states, and in any event is inadmissible in a claim in the action before this Court, in the proceedings before this Court. This document, as has been called to the attention of the Court, consists of what would probably be termed a petition for relief, actually a letter of transmittal, a statement by Mr. Jacob— [2009]

Mr. Rathbun: Jacobson.

Mr. Vitousek: Just a minute. By C. H. Jacob-

son, who was at that time the President of the Honolulu Plantation Company; a statement of the qualifications of Mr. Schmutz and of Mr. Austin, although it nowhere appears that Mr. Austin has anything further other than his qualifications; then appears a statement by Mr. Schmutz, a letter and what is probably termed his remarks; and the nature of the damage and the damage estimates; then, if the Court please, there is a series of computations made up, as stated on the stand by Mr. Schmutz, made up in San Francisco but would probably be termed, are termed schedules, computation of figures; then there is a statement here by the attorney for the company, the attorney in presenting the claim—it appears to be an unsigned statement, as to the legal status of the matter, and that, of course, is what we are before this Court to determine; then there is a statement by the manager of the company in general terms, followed by the names of the stockholders, together with the shares held by the stockholders; a copy of the Bill as presented to Congress, not as it passed the House of Representatives.

Now, none of these matters would constitute an admission against interest or in any way contradict the testimony of the witnesses before the Court. And the opinion of the attorney does not in any way bind the company because it has not been concurred in by the representatives of the Government, and that's the reason we are before the Court. If they come before Congress and agree to it, as they did not, that would be one thing. And now in this par-

ticular action, this particular attorney is not an attorney representing the parties, but the firm of Stanley, Vitousek, Pratt and Winn are. And we present the views to this Court of our understanding of the law and our position in regard to the law, which we have done in the various objections to evidence, various motions, and will do so in the briefs that will be presented according to your Honor's desires.

And for all those reasons we object to the introduction of this exhibit in evidence.

The Court: You believe on the theory of the document containing certain admissions against interest that the entire document is admissible, Mr. Rathbun?

Mr. Rathbun: Yes, your Honor. It's all one document. It has exhibits attached to the back end of it which are referred to by Schmutz. The arguments presented by those, the exhibits, are illustrative of the arguments presented by the different parties who make these different statements in the claim. They all go to one purpose, that is, to state their claim to Congress; it's all one document and must be read together.

The Court: How about this opinion by the attorney?

Mr. Rathbun: It's all part of the document as filed. [2011] I don't know that it is signed by any attorney. I don't know that it is a statement of an attorney even. I don't know where Mr. Vitousek gets that.

Mr. Driver: A statement by the parties in interest.

Mr. Rathbun: By the parties in interest. There isn't any attorney that I know of.

The Court: It's headed by a statement by a party in interest.

Mr. Driver: A statement that their counsel have advised, and so forth.

Mr. Vitousek: If the Court please, a statement that they are advised by counsel regarding the law. Now, that's the very matter before this Court. Suppose they had been incorrectly advised? It's certainly not frequently that parties are advised as to the law, and the Court changes that law by its decision. And it has no effect. If in here they could show a difference between the witnesses' testimony and the computations, which are unexplained, it might be said then that it would be contradictory. But there has been no such thing.

The Court: Wasn't there something of that sort in regard to Schmutz' testimony?

Mr. Vitousek: No, if the Court please, Mr. Schmutz said he thought certain of the exhibits had been changed, the only point of difference that might be. But that's a mere matter of [2012] argument. He didn't contradict the figures. But on the availability of money to pay dividends, now, under the California law you can pay dividends out of the current earnings, and in one of these exhibits it shows the net receipts from which had been taken depreciation, and so forth. And he said that the amounts which are in the books, in the book entry

setting aside, or taking out the depreciation and amortization, while that's shown here, he said in his opinion those are still available to pay dividends. And they are under the California law, as we showed your Honor. But there's nothing to show that we are wrong. That's the point. It's just a matter of interpreting the figures as shown. The same thing came up, your Honor will recall, when we offered the plantation reports in evidence, the statements of the parties; the figures as shown from the books were received but the statements of the manager and president were excluded. And that's our position, we submit, your Honor.

The Court: Have you anything else you want to say?

Mr. Rathbun: Why no, your Honor. We are not disputing the figures. Those are their figures. We took the figures as we found them in cross-examining these witnesses. Mr. Vitousek misses the point of the purpose of the cross-examination in hooking this up, it seems to me. We asked on cross-examination of all of these witnesses that testified to value what they based them on as opinion of a million dollars decrease. [2013] And among other things the experts specially named several things that they considered. What we have in mind is the law on the things that they did consider as being items of damage which cannot be used in a condemnation suit in arriving at what the value is. Among the things were earnings. Now, like all experts, Mr. Schmutz specially, after going over those different things that he considered but didn't consider, what-



ever that means, I can't help in this final case that I am trying in these courts to make the comment that if there is anything in jurisprudence that shakes the confidence of the public in jurisprudence it is experts so-called. This is a fine illustration: he named five or six different things that he considered, and then when pinned down on cross-examination he said he gave no value to that in arriving at his opinion. Therefore, he pulled it out of air. That's what we'll argue. Just as Mr. Cozier did. He talks about earnings, all of those things, and then he says that he gave no dollars and cents value to all of those things. This shows that he did, this claim in Congress, based solely on that. Therefore, we argue that it is a business assistance. It is inconsistent with his testimony.

The Court: In view of the fact that this claim to Congress is substantially the same type in general of what is made here, and in view of all the cross-examination of the experts with reference to this Congressional claim, I am going [2014] to admit Exhibit 1 for identification, and you may have an exception to it.

Mr. Vitousek: Exception, if the Court please. Now, if the Court please, I have one matter——

The Court: Just let it get marked. Exhibit 1 for identification becomes——

The Clerk: U. S. Exhibit O.

(The document previously marked U. S. Exhibit 1 for identification was received in evidence as U. S. Exhibit O.)

Mr. Vitousek: If the Court will recall, I reserved the right to adduce evidence in case this was admitted, and if counsel is through, I have one matter I want to bring up.

The Court: This is in the nature of rebuttal?

Mr. Vitousek: Yes, to this exhibit.

The Court: Before we get there, have you finally made up your mind as to what you are going to do about your request to recall Mr. Austin?

Mr. Vitousek: I am going to waive that.

The Court: Everything is cleaned up up to this point, and the only thing is rebuttal from now on? All right, you may call your first witness in rebuttal.

Mr. Vitousek: It will not be witnesses. I want to offer in evidence the report of the Congressional Committee of the House of Representatives, which Committee was considering the [2015] claim and considering this brochure, a report numbered 1313, which I referred to. And in view of the fact that in making the offer of this exhibit—Government attorneys said that it is an admission against interest because it constitutes a business damage—this report shows how it was considered and received by the Congressional Committee to whom it was submitted. Attached to this report are the letters from the Attorney General, from the Secretary of the Navy and from the Acting Secretary of War. We offer this report in evidence.

Mr. Rathbun: I object to it as incompetent, irrelevant and immaterial what some House Committee might find about this claim, if it has any

justification in this record. Our purpose in putting this document in goes to the witnesses that testified, that were cross-examined. Nobody can cross-examine those men who signed their names to that. I don't even know who they are. I have never seen them.

The Court: On what theory do you offer this?

Mr. Vitousek: Well, if the Court please, this is an official document. Under the case of *U. S. against Aluminum Company of America*, reported in 1 Federal Rules Decisions, on page 71, it is admissible without further proof because it has been officially printed, because it is printed on the face itself.

Mr. Rathbun: We raise no question as that, that it is official. [2016]

Mr. Vitousek: It may be either received in evidence or be judicially considered by the Court.

The Court: Do you have in mind on that last point judicial notice? Do you have judicial notice in mind?

Mr. Vitousek: Yes, it was held in this case that either it could be received—we feel that it should be part of the record rather than by referring to the outside. The claim was submitted to Congress and contains in it an opinion of counsel, a statement that they had been advised by counsel. Now, in this report is also shown the position of the various Government agencies, one of which being from the Secretary of the Navy in which it is claimed that the opinion of counsel was wrong, that the Baetjer case controlled, and that it was a matter that could



be determined before the court. Now, it all ties up to this report, if this report is going to be used for the purpose which is stated by counsel as an admission against interest. We feel that the entire Congressional hearing and report is a part of that complete record. The bill as submitted in the record was changed there; the payment of a claim was changed to an authority to present before the Court of Claims; and it is all shown in the report. We feel if this report is in evidence, then the entire matter should be before the Court.

The Court: Let me see that.

Mr. Rathbun: In the light of that, the case that counsel [2017] cited, there is nothing in that case that says that any document should be received that is not material to a law suit, which is incompetent and immaterial on the mere point that is cited there, that the document upon its face—the apparent authenticity of the Government department is well-known and I have no objection to that, but it must be shown to be material. If we are going to take the opinions of a lot of lieutenants, and so forth, in the Navy, we might as well start subpoenaing about a thousand witnesses on mere opinion.

The Court: This is the only report that was ever made by that Congress on this claim?

Mr. Vitousek: Yes, if the Court please. This is a report by the House Committee. It is the only one made.

The Court: It never got to the Senate?

Mr. Vitousek: It went to the Senate but Con-

gress adjourned before the matter was brought up before the Senate. And I call the Court's attention to the fact that this brochure, whether you call it a claim or not, was the one referred to in there as Exhibit 1. In there, I mean by the report of the Committee.

The Court: I am going to admit it so I can have the whole picture before me to find out what it is all about. It may become exhibit what, Mr. Clerk?

The Clerk: Honolulu Plantation Exhibit No. 19.

The Court: The Government may have an exception. [2018]

(The document referred to was received in evidence as Honolulu Plantation Company's Exhibit No. 19.)

[Printer's Note: Exhibit No. 19 is set out in full at page 1542 of this printed Record.]

Mr. Vitousek: I close the matter, if the Court please, insofar as the Honolulu Plantation Company, respondent.

The Court: All right, then both parties rest?

Mr. Vitousek: We rest.

Mr. Rathbun: That's right.

The Court: Very well. I indicated yesterday that at the termination of the case I will prefer to have briefs rather than oral arguments exclusively. I still feel the same way about that, in view of the complicated nature of this case. On the subject of getting out the transcript, which I understand both parties have ordered or made arrangements with the reporter to procure, the reporter tells me that he has employed a dictaphone operator and the

prospects of getting it out sooner than otherwise indicated are enhanced. What is your present prognostication of when the transcript will be ready?

The Reporter: About two or three weeks.

The Court: That would be about February 10th, without holding you to any such date but as a working proposition. Knowing that I want briefs, do you also want to orally argue the case?

Mr. Rathbun: I don't think there is any occasion for both.

Mr. Vitousek: I think there is no occasion for it unless [2019] the Court feels that after the briefs are in you might want it.

The Court: I'd be well satisfied to have the briefs exclusively unless there is some point raised in the briefs that I'd like elaboration upon.

Mr. Rathbun: I might state to the Court that as far as the Government is concerned we are prepared from our notes to file a brief in this case on very short time without the record, if the Court wants it.

The Court: Very well.

Mr. Vitousek: Well, if the Court please, I think since we are going to file briefs we should have the record. While we think our notes are accurate, I don't like to be in a position of making a statement and not having it from the exact record. I don't think, I don't believe that it would take quite as long, of course, as what it would ordinarily if we get the record. But I'd like to be able to quote the exact record.

The Court: Well, you having the burden in this

case, it will be your duty also to file the first brief. How many days after the record is available to you do you want for the filing of the opening brief?

Mr. Vitousek: I would suggest two weeks, if the Court please, for the brief.

The Court: And after that is filed, how long does the Government want to file its reply? [2020]

Mr. Rathbun: That's a little hard to tell until we see their brief. We'll base it on their brief.

The Court: What arrangement can we make now that would be satisfactory?

Mr. Rathbun: I'm sure I couldn't guess about that. They might file one of ten pages or one of five hundred.

Mr. Vitousek: We intend to cover the matter thoroughly and naturally we can't say how many pages, if the Court please. I feel that this is an important matter and we should not try to cut down.

The Court: Are you sure that two weeks after receiving the transcript is long enough?

Mr. Vitousek: I think so. We can work on it in the meantime, on the law, etc.; I say that because naturally we wouldn't have to study the transcript for that.

The Court: I was thinking of giving the Government 30 days after you file your brief.

Mr. Vitousek: Well, I can assure the Court that whatever time we have we will file a brief as soon as we have completed it. We are not going to delay. If the Court thinks 30 days, I should think we

should have more time, but naturally we want to get it in.

Mr. Rathbun: Well, the situation as far as I am concerned is what I stated yesterday.

The Court: Well, I think to be equally fair about the [2021] matter, I am going to give you 30 days within which to file your opening brief from the date the reporter files the transcript, and after your brief is filed and served on the Government, it may have 30 days within which to file a reply brief. And after you receive its reply brief, you may have two weeks within which to file an answering brief.

Mr. Vitousek: Yes.

The Court: All right. The case stands submitted, and I know it's been a hard case, but I do want you both to know that I appreciate your attention and courtesy and help. And I don't know whether Mr. Rathbun would want this on the record or not, but I do know that he has said that this is the last case he is going to try here for the Justice Department, and I do want him to know he is leaving with the good wishes of all concerned, and we have appreciated his aid and assistance in all condemnation work in this Court.

Mr. Rathbun: I am very grateful, your Honor. I have been treated very well by the Court here and I have appreciated all they have done for me.

Mr. Vitousek: If the Court please, I'd like to say that we appreciate the courtesy that has been extended by the Court and by the Government attorneys from time to time, when we had to adjourn



to get more time, and extreme courtesy has been shown.

The Court: Very well. Now that all flowers have been [2022] distributed, we will adjourn.

(The Court adjourned at 11:40 o'clock a.m.)

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I, Albert Grain, Official Court Reporter, U. S. District Court, Honolulu, T. H., do hereby certify as follows:

That the foregoing is a true and correct transcript of testimony in the trial of Civil No. 514, United States of America versus 257.654 acres of land, and Civil Nos. 521, 525, 527, 529, 532, 533, 535, 536, 540, 544, 548 and 684, consolidated into one trial held in the above-named court on December 2, 1946, 3, 5, 6, 9, 10, 11, 12, 19, 20, and January 6, 8, 9, 10, 14 and 15, 1947; that same was held before the Hon. J. Frank McLaughlin, Judge.

Feb. 12, 1947.

/s/ ALBERT GRAIN. [2024]

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[Title of District Court and Cause No. 514.]

### CERTIFICATE OF CLERK

United States of America,  
District of Hawaii.—ss.

I, Wm. F. Thompson, Jr., Clerk of the United States District Court for the District of Hawaii, do hereby certify the foregoing pages numbered 1



to 2024, inclusive, to be a true and complete transcript of the record and proceedings had in said court in the above-entitled causes, as the same remains of record and on file in my office, and I further testify that the costs of the foregoing transcript of record are \$93.10 and that said amount has been charged by me in my account against the United States.

In Witness Whereof, I have hereunto set my hand and affixed the seal of said District Court, this 4th day of August, 1948.

(Seal)            /s/ WM. F. THOMPSON, Jr.,  
Clerk, United States District Court, District of  
Hawaii.

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#### HONOLULU PLANTATION EXHIBIT 4-A

(Admitted in Evidence 12-3-46)

Land Court Document No. 63916

Cancelled Nov. 28, 1944

#### POWER OF ATTORNEY

Honolulu Plantation Company to P. E. Spalding,  
L. D. Larsen, W. Jamieson and H. T. Kay

Know All Men by These Presents:

Honolulu Plantation Company, a corporation organized and existing under and by virtue of the laws of the State of California, and having its principal place of business in the City and County of San Francisco, in said State, does hereby make, constitute and appoint P. E. Spalding, L. D. Larsen, W. Jamieson and H. T. Kay, all residing at

Honolulu, in the Territory of Hawaii, and each of them, the true and lawful attorneys and attorney of said corporation, for it and in its name, place and stead, and as its act and deed to take charge and possession of all and singular the property, real and personal, belonging to said corporation and situated in the said Territory of Hawaii, and to care for and manage said property, to buy, sell, hire or otherwise dispose of or deal in goods, wares, merchandise, choses in action, and other personal property in possession or in action; to make loans and advances of money to others secured by either mortgage or pledge of real or personal property, or otherwise; to purchase, take on lease, receive and otherwise acquire lands, tenements and hereditaments, or any interest therein, and to accept seizin and possession thereof and delivery of all deeds and other assurances therefor; to lease or let to others, lands, tenements, hereditaments and to surrender leases and tenancies upon such terms and conditions as the said attorneys or attorney shall think fit; to ask, demand, sue for, recover, collect and receive all sums of money, debts, dues, accounts, interest, dividends, property and demands whatsoever as are now or shall hereafter become due, owing payable, deliverable or belonging to said corporation, and to have, use and take all lawful ways and means for the recovery thereof in the name of said corporation, or otherwise, by attachments, arrests, distress or otherwise, and to compromise, submit to arbitration, or otherwise adjust all claims and demands aforesaid and grant acquittances or

other sufficient discharges therefor; to commence, prosecute or enforce or defend, answer or oppose all actions, suits or other legal proceedings in which said corporation is or may hereafter be interested or concerned, and to compromise, refer to arbitration, abandon, submit to judgment, or become nonsuited, in any such action, suit or proceeding; to vote at all stockholders' meetings held in the Territory of Hawaii, of any company or companies, or otherwise to act as the proxy or representative of said corporation in respect of any shares of any company or companies now owned or which may hereafter be acquired by said corporation, and in connection therewith to execute any consents or other instruments in the name of said corporation as shall be necessary in the premises; to return for assessment of taxes all property of any description now or hereafter held or owned by said corporation in the Territory of Hawaii, and of all income earned or produced by said corporation from any source in said Territory of Hawaii, and to appeal against any assessment of such property or income; to concur with any other corporation or any person or persons in doing any of the acts, matters and things hereinbefore mentioned, and to sign, execute, deliver and acknowledge for and on behalf of said corporation and in its name, place and stead and as its act and deed such instruments in writing of whatever kind and nature as may be necessary or proper in the premises.

Hereby Giving and Granting unto the said attorneys or attorney full power and authority to do and

perform all and every act and thing whatsoever requisite, necessary or proper to be done in and about the premises as fully and to all intents and purposes as said corporation might or could do;

Hereby Ratifying and Confirming all that its said attorneys or attorney shall lawfully do or cause to be done by virtue of these presents.

This Power of Attorney shall revoke that certain power of attorney heretofore executed by Honolulu Plantation Company to R. A. Cooke, P. E. Spalding, L. D. Larsen and Alvah A. Scott, dated the 10th day of January, 1935, duly recorded in the Office of the Registrar of Conveyances in Honolulu in Book 1270, Pages 150 to 153, and upon the execution hereof, said former power of attorney shall become null and void.

In Witness Whereof, the said Honolulu Plantation Company has caused these presents to be executed by its officers thereunto duly authorized and its corporate seal to be affixed this 26th day of September, 1941.

HONOLULU PLANTATION  
COMPANY,

By /s/ JOHN D. McKEE,  
President.

By /s/ PETER LEWIS,  
Secretary.

(Corporate Seal)

State of California,  
City and County of San Francisco.—ss.

On this 21st day of October A. D., 1941, before me appeared John D. McKee and Peter Lewis, to me personally known, who being by me duly sworn, did say that they are the President and Secretary respectively of Honolulu Plantation Company, and that the seal affixed to the foregoing instrument is the corporate seal of said corporation and that said instrument was signed and sealed in behalf of said corporation by authority of its Board of Directors, and the said John D. McKee and Peter Lewis acknowledged said instrument to be the free act and deed of said corporation.

(Seal)        /s/ LILLIAN RALSTON,  
Notary Public in and for the City and County of  
San Francisco, State of California.

My Commission Expires December 22, 1944.

State of California,  
City and County of San Francisco.—ss.

I, H. A. van der Zee, County Clerk of the City and County of San Francisco, State of California, and ex-officio Clerk of the Superior Court thereof (the same being a Court of Record, having by law a seal), being the officer authorized by the laws of said State of California to make the following certificate, Do Hereby Certify: That Lillian Ralston, whose name is subscribed to the Jurat, Affidavit, or Certificate of the Proof or Acknowledgment of the annexed instrument, was, at the time of taking the



same, a Notary Public in and for said City and County of San Francisco, residing therein, duly commissioned, qualified and sworn and duly authorized by the laws of said State of California to take Jurats, Affidavits, and the Acknowledgments and Proofs of Deeds or Conveyances for lands, tenements or hereditaments in said State, to be recorded therein.

I further certify that I am well acquainted with the handwriting of said Notary Public and verily believe that the signature to said Jurat, Affidavit, Acknowledgment or Certificate is genuine, and that the said instrument is executed or acknowledged according to the laws of said State of California. Further that I have compared the impression of the seal affixed thereto with a specimen impression thereof deposited in my office pursuant to law, and that I believe the impression of the seal upon the original certificate is genuine.

In Testimony Whereof, I have hereunto set my hand and affixed the seal of said Superior Court.

Dated: Oct. 22, 1941.

(Seal)            /s/ H. A. VAN DER ZEE,  
Clerk.

Honolulu, Hawaii, December 9, 1943.

I hereby certify that I have compared the foregoing copy with the original Power of Attorney given by Honolulu Plantation Company to P. E. Spalding et als, dated September 26, 1941, duly recorded in the office of the Registrar of Convey-



ances in Honolulu in Book 1684 Pages 247-250, and find same to be a full, true and correct copy of said original.

Attest:

(Seal)            /s/ ALBERT K. AKANA,  
Notary Public, First Judicial Circuit, Territory of  
Hawaii.

My Commission expires June 30, 1945.

The original of this document recorded as follows: Territory of Hawaii, Office of Bureau of Conveyances. Received for record this 4th day of November A. D. 1941 at 1:43 o'clock p.m. and recorded in Liber 1684 on Pages 247-250 and compared. Signed, M. N. Huckestein, Registrar of Conveyances.

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## HONOLULU PLANTATION EXHIBIT 4-B

(Admitted in Evidence 12-3-46)

Power of Attorney

Honolulu Plantation Company to P. E. Spalding,  
S. L. Austin and/or H. T. Kay

Know All Men by These Presents:

Honolulu Plantation Company, a corporation organized and existing under and by virtue of the laws of the State of California, and having its principal place of business in the City and County of San Francisco, in said State, does hereby make, constitute and appoint P. E. Spalding, S. L. Austin and/or H. T. Kay, all residing at Honolulu, in the

Territory of Hawaii, and each of them, the true and lawful attorneys and attorney of said corporation, for it and in its name, place and stead, and as its act and deed to take charge and possession of all and singular the property, real and personal, belonging to said corporation and situated in the said Territory of Hawaii, and to care for and manage said property, to buy, sell, hire or otherwise dispose of or deal in goods, wares, merchandise, choses in action, and other personal property in possession or in action; to make loans and advances of money to others secured by either mortgage or pledge of real or personal property, or otherwise; to purchase, take on lease, receive and otherwise acquire lands, tenements and hereditaments, or any interest therein, and to accept seizin and possession thereof and delivery of all deeds and other assurances therefor; to lease or let to others, lands, tenements, hereditaments and to surrender leases and tenancies upon such terms and conditions as the said attorneys or attorney shall think fit; to ask, demand, sue for, recover, collect and receive all sums of money, debts, dues, accounts, interest, dividends, property and demands whatsoever as are now or shall hereafter become due, owning payable, deliverable or belonging to said corporation, and to have, use and take all lawful ways and means for the recovery thereof in the name of said corporation, or otherwise, by attachments, arrests, distress or otherwise, and to compromise, submit to arbitration, or otherwise adjust all claims and demands aforesaid and grant acquittances or other sufficient

discharges therefor; to commence, prosecute or enforce or defend, answer or oppose all actions, suits or other legal proceedings in which said corporation is or may hereafter be interested or concerned, and to compromise, refer to arbitration, abandon, submit to judgment, or become non-suited, in any such action, suit or proceeding; to vote at all stockholders' meeting held in the Territory of Hawaii, or any company or companies, or otherwise to act as the proxy or representative of said corporation in respect of any shares of any company or companies now owned or which may hereafter be acquired by said corporation, and in connection therewith to execute any consents or other instruments in the name of said corporation as shall be necessary in the premises; to return for assessment of taxes all property of any description now or hereafter held or owned by said corporation in the Territory of Hawaii, and of all income earned or produced by said corporation from any source in said Territory of Hawaii, and to appeal against any assessment of such property or income; to concur with any other corporation or any person or persons in doing any of the acts, matters and things hereinbefore mentioned, and to sign, execute, deliver and acknowledge for and on behalf of said corporation and in its name, place and stead and as its act and deed such instruments in writing of whatever kind and nature as may be necessary or proper in the premises.

Hereby Giving and Granting unto the said attorneys or attorney full power and authority to do

and perform all and every act and thing whatsoever requisite, necessary or proper to be done in and about the premises as fully and to all intents and purposes as said corporation might or could do;

Hereby Ratifying and Confirming all that its said attorneys or attorney shall lawfully do or cause to be done by virtue of these presents.

This Power of Attorney shall revoke that certain power of attorney heretofore executed by Honolulu Plantation Company to P. E. Spalding, L. D. Larsen, W. Jamieson and H. T. Kay, dated the 26th day of September, 1941, duly recorded in the Office of the Registrar of Conveyances in Honolulu in Book 1684, Pages 247 to 250, and upon the execution hereof, said former power of attorney shall become null and void.

In Witness Whereof, the said Honolulu Plantation Company has caused these presents to be executed by its officers thereunto duly authorized and its corporate seal to be affixed this 28th day of November, 1944.

HONOLULU PLANTATION  
COMPANY,

By /s/ ARTHUR E. CORDER,  
Vice-President.

By /s/ F. F. DIXON,  
Secretary.

(Corporate Seal)

State of California,  
City and County of San Francisco.—ss.

On this 28 day of November, A. D., 1944, before me appeared Arthur E. Corder and F. F. Dixon, to me personally known, who being by me duly sworn, did say that they are the Vice-President and Secretary respectively of Honolulu Plantation Company, and that the seal affixed to the foregoing instrument is the corporate seal of said corporation and that said instrument was signed and sealed in behalf of said corporation by authority of its Board of Directors, and the said Arthur E. Corder and F. F. Dixon acknowledged said instrument to be the free act and deed of said corporation.

(Seal)        /s/ FLORENCE HANEY,  
Notary Public in and for the City and County of  
San Francisco, State of California.

My Commission Expires May 22, 1945.

State of California,  
City and County of San Francisco.—ss.

I, H. A. van der Zee, County Clerk of the City and County of San Francisco, State of California, and ex-officio Clerk of the Superior Court thereof (the same being a Court of Record, having by law a seal), being the officer authorized by the laws of said State of California to make the following certificate, Do Hereby Certify: That Florence Haney, whose name is subscribed to the Jurat, Affidavit, or Certificate of the Proof or Acknowledgment of the annexed instrument, was, at the time of taking the



same, a Notary Public in and for said City and County of San Francisco, residing therein, duly commissioned, qualified and sworn and duly authorized by the laws of said State of California to take Jurats, Affidavits, and the Acknowledgments and Proofs of Deeds or Conveyances for lands, tenements or hereditaments in said State, to be recorded therein.

I further certify that I am well acquainted with the handwriting of said Notary Public and verily believe that the signature to said Jurat, Affidavit, Acknowledgment or Certificate is genuine, and that the said instrument is executed or acknowledged according to the laws of said State of California. Further that I have compared the impression of the seal affixed thereto with a specimen impression thereof deposited in my office pursuant to law, and that I believe the impression of the seal upon the original certificate is genuine.

In Testimony Whereof, I have hereunto set my hand and affixed the seal of said Superior Court.

Dated: Nov. 29, 1944.

(Seal)            /s/ H. A. VAN DER ZEE,  
Clerk.

Honolulu, Hawaii, December 20, 1944.

I hereby certify that I have compared the foregoing copy with the original Power of Attorney, given by Honolulu Plantation Company to P. E. Spalding, S. L. Austin and H. T. Kay, dated November 28, 1944, duly recorded in the office of the Registrar of Conveyances in Honolulu in Book



1858 Pages 497-500 and find the same to be a full, true and correct copy of said original.

.....

Notary Public, First Judicial Circuit, Territory of  
Hawaii.

My Commission expires June 30, 1945.

The original of this document recorded as follows: Territory of Hawaii, Office of Bureau of Conveyances. Received for record this 7th day of December A. D. 1944 at 9:54 o'clock A.M. and recorded in Liber 1858 on Pages 497-500 and compared. Signed M. N. Huckesfein, Registrar of Conveyances.

## HONOLULU PLANTATION EXHIBIT No. 6

(Admitted in Evidence 12-3-46)

SUMMARY OF AREAS TAKEN BY THE UNITED STATES  
FROM HONOLULU PLANTATION COMPANY

Civil Case No.	Total Acres in Suit	Acres under control of H. P. Co.			
		Total	Caneland	Contribu- tory	Other Lessor to Use H.P. Co.
514	257.654	152.663	134.49	15.762	2.411
521	49.058	4.822	.....	.....	4.822
525	216.124	80.351	66.82	2.380	10.651
527	93.355	93.355	85.74	2.164	5.451
529	344.893	344.059	283.74	12.683	47.636
532	8.279	8.279	.....	.....	8.279
533	218.349	145.000	48.61	3.580	92.810
535	145.225	145.225	135.17	10.055	.....
536	26.922	23.509	.....	.....	23.509
540	124.914	1.400	.....	.....	1.400
544	317.705	310.200	294.01	16.190	.....
548	63.725	39.500	25.30	1.690	12.510
684	29.981	15.983	13.71	.....	2.273
		1,896.184	1,364.346	1,087.59	65.004
				211.752	

(Retyped 12/3/46 in sextpl. from 11/25/46 copy)

Honolulu Plantation Exhibit No. 6—(Cont'd)

1301

Civil Case No.	Owner	Total Acres in Suit	Acres under Control of H. P. Co.						Other Use
			Total	Cane Field No.	Cane By Field	Cane By Owner	Cane By R/E	Contrib.	
514	Damon Estate .....	235.972	130.981	84	112.98	119.21	123.83	11.771	
				79	6.23				
	Queen Emma Estate.....	21.682	21.682	79	3.25				
				84	1.37				
					4.62				
				81	10.66		10.66		
						15.28		3.991	2.411
	Totals.....	257.654	152.663		134.49	134.49	134.49	15.762	2.411
521	H. P. Co. Fee.....	0.577	0.577						0.577
	Alului Estate .....	2.698	2.698						2.698
	McCandless Estate .....	1.547	1.547						1.547
	Cooper Estate .....	44.236							
	Totals.....	49.058	4.822						4.822
525	Damon Estate .....			88	34.86				
				89	31.96				
	Totals.....	216.124	80.351		66.82	66.82	66.82	2.880	10.651
527	Damon Estate .....			91	47.75				
				92	11.96				
							59.71		
				107	26.03		26.03		
	Totals.....	93.355	93.355		85.74	85.74	85.74	2.164	5.451

## Honolulu Plantation Exhibit No. 6—(Cont'd)

Civil Case No.	TAKINGS BY PLTN. RECORD			TAKINGS AS PER GOV'T.				
		Field No.	Cane by Field					
529	1st Taking 3/8/43	Bishop Estate .....	3	7.79	Bishop Estate .....	7.84		
	2nd Taking 1/14/44	Haw'n. Land & Imp. ....	4	3.51	{	Bishop Estate .....	56.96	
		Bishop Estate .....	3	7.10				
		Bishop Estate .....	4	76.20				
	3rd Taking Apr. 14-21/44	Haw'n. Land & Imp.....	4	1.30		Bishop Estate .....	40.424	
		Haw'n. Land & Imp. ....	6	44.42	{	Haw'n. Land & Imp.....	64.285	
		Haw'n. Land & Imp. ....	7	43.80				
		Bishop Estate .....	4	55.70		Haw'n. Land & Imp. ....	29.784	
		Bishop Estate .....	6	1.68		Bishop Estate .....	66.090	
	4th Taking June 1944	Bishop Estate .....	3	1.38	{			
		Haw'n. Land & Imp. ....	7	10.61		Haw'n. Land & Imp. ....	11.155	
		Bishop Estate .....	5	26.82		Bishop Estate .....	40.330	
		H. P. Co. Fee.....	5	.18		H. P. Co. Fee .....	1.627	
		McCandless .....	5	3.25		McCandless .....	12.924	
		(No Cane)				Bishop (Oahu Sugar Lease)..	3.9	
						Bishop (Oahu Sugar Lease)..	8.740	
		Totals.....		283.74			344.059	
SUMMARY				Total in Suit	Control by H.P. Co.	Total Cane	Contributory	Other Use
Bishop Estate.....				212.436	211.644	176.67		
Bishop (Oahu Sugar Lease) .....				12.640	12.640			
Haw'n. Land & Imp. Co.....				105.224	105.224	103.64		
McCandless.....				12.924	12.924	3.25		
H. P. Co.—Fee.....				1.627	1.627	0.18		
Others.....				0.042				
Totals.....				344.893	344.059	283.71	12.683	47.636

		Acres under Control of H. P. Co.							Other Use
Civil Case No.	Owner	Total Acres in Suit	Total	Cane Field No.	Cane by Field	Cane by Owner	Cane By R/E	Contrib.	
532	Queen Emma .....	8.279	8.279						8.279
533	Bishop Estate (Oahu S. Co.—lease) .....	218.349	145.00	1	48.61	48.61	48.61	3.58	92.81
535	Bishop Estate .....	98.961	98.961	62	92.175			6.786	
	McCandless .....	0.545	0.545	62	0.545	4.515			
							92.72		
	Bishop Estate .....	15.076	15.076	61	14.71		14.71	.366	
	Bishop Estate .....	26.195	26.195	61	23.56		23.56	2.635	
	Bishop Estate .....	1.716	1.716	56	1.448		1.448	.268	
						131.893			
	Hon. Pltn. Co.—Fee .....	2.732	2.732	56	2.732	2.732	2.732		
	Totals.....	145.225	145.225		135.17	135.17	135.17	10.055	
536	Austin Estate .....	26.078	22.665						22.665
	Francis Brown .....	.844	.844						.844
	Totals.....	26.922	23.509						23.509
540	Bishop Estate et al.....	124.914	1.40						1.40
544	Damon Estate .....			82	46.95				
				83	66.53				
							112.03		
				88	12.81				
				86	82.89				
				85	84.83				
							180.53		
	Totals.....	317.705	310.20		294.01	291.01	294.01	16.19	
548	Damon Estate .....	63.725	39.5	87	25.30	25.30	25.30	1.690	12.510
684	Damon Estate .....	16.936	3.93	84	1.16				
				87	2.77				
						3.93	3.93		
	Queen Emma Estate .....	9.132	8.783	79	3.95				
				71	2.56				
						6.51	6.51		
	Bishop Estate .....	3.523	3.27	63	3.27	3.27	3.27		
	Totals.....	29.891	15.983		13.71	13.71	13.71		2.273

HONOLULU PLANTATION EXHIBIT No. 7  
(Admitted in Evidence 12-3-46)

HONOLULU PLANTATION COMPANY—STATEMENT OF LANDS—DECEMBER 31, 1944

Exhibit "H"

Lessors	Location	Date of Expiration	Annual Rental	Cane Area Acres	Bldgs. and Camp Sites	Reservoirs and Fish Ponds	Pine Veg. and Pasture	Roads and Railroads	Miscellaneous and Waste	Total Area Acres
S. M. Damon Estate.....	Moanalua	Dec. 31, 1953	\$1,360.00	64.75	.....	.....	.....	1.82	1.43	68.000
Edith Austin, et al.....	Waimalu	Dec. 31, 1965	None	.....	.....	.....	.....	.....	1295.00†	1295.000
Edith Austin, et al.....	Waimalu	Dec. 31, 1965	5%*	585.40	3.07	2.86	.....	19.75	996.16	1607.240
Queen Emma Estate.....	Aiea	Dec. 31, 1965	\$ 50.00	.....	.....	.....	1.72	.....	.....	1.720
Queen Emma Estate.....	Halawa	Dec. 31, 1965	5%*	412.13	3.00	.....	637.56	24.85	411.739	1489.279
Queen Emma Estate.....	Halawa	Dec. 31, 1965	None	.....	.....	.....	.....	.....	1145.00†	1145.000
L. L. McCandless Estate.....	Waieie	Dec. 31, 1963	\$1,647.50	29.34	.....	1.00	.....	2.83	78.83	112.000
L. L. McCandless Estate.....	Kalauao	Jan. 1, 1945	477.68	3.50	.596	2.10	.....	.....	7.445	13.641
L. L. McCandless Estate.....	Kalauao	Tenacy	583.08	9.56	.....	.....	.....	.056	5.558	15.174
L. L. McCandless Estate.....	Halawa	Exchange Lease	300.00	4.11	.542	.....	.....	.09	1.257	5.999
L. L. McCandless Estate.....	Kalauao	Tenacy	.....	3.90	.....	.....	.....	.....	.....	3.900
Territory of Hawaii.....	Waimano-Uka	July 25, 1964	100.00	.....	.....	2.07	.....	13.16	.....	15.230
Territory of Hawaii.....	Aiea	Mar. 2, 1952	20.00	.....	.853	.....	.....	.....	.....	.853
Secretary of War, U.S.A.....	Halawa	April 3, 1945	52.64	1.36	.....	.....	.....	.....	6.16	7.520
Oahu Railway & Land Co.....	Waimano-Manana	Dec. 31, 1965	5%*	612.47	.75	2.67	.17	22.67	93.345	732.075
Oahu Railway & Land Co.....	Manana	Dec. 31, 1965	\$ 358.00	18.16	.20	.....	5.55	1.23	38.30	63.440
B. P. Bishop Estate.....	Halawa	Dec. 31, 1965	5%*	1258.82	12.27	26.50	193.141	63.30	799.984	438.556
	Aiea									10.862
	Kaonohi									641.370
	Kumuulu									1037.454
	Waiau and Waimalu									2.935
B. P. Bishop Estate.....	Waiau	Dec. 31, 1965	None	.....	.....	.....	.....	.....	.....	2.130
	Waimano									2.067
	Waiawa									218.641
	Halawa									2323.600
B. P. Bishop Estate.....	Kaonohi	Dec. 31, 1965	None	.....	.....	.....	.....	.....	865.00†	865.000
B. P. Bishop Estate.....	Kumuulu	Dec. 31, 1965	None	.....	.....	.....	.....	.....	1170.00†	1170.000
B. P. Bishop Museum:										
Parcel "A".....	Kalauao	Dec. 31, 1965	5%*	141.63	4.83	5.20	130.50	9.00	37.55	328.710
Parcel "B".....	Kalauao	Dec. 31, 1965	None	.....	.....	.....	.....	.....	635.00†	635.000
Oahu Sugar Co., Ltd. (Sublease).....	Waiawa	June 30, 1965	\$ 261.55	2.25	.....	.....	9.88	.90	7.629	20.659
Sundry Leases.....	.....	.....	.....	11.64	.582	.....	.089	.974	6.063	19.348
Total Leased Lands.....	.....	.....	.....	3159.02	26.693	42.10	978.610	160.630	9925.050	14,292.403
Fee Simple Lands.....	.....	.....	.....	150.73	145.273	.....	10.212	12.780	67.732	386.727
Total all Lands.....	.....	.....	.....	3309.75	171.966	42.10	988.822	173.410	9992.782	14,679.130

\* Gross Raw Sugar Produced.

† Forest Reserve.









**HONOLULU PLANTATION EXHIBIT 9-A**

(Admitted 12-3-46)

Received Aug. 14, 1941

Answered Aug. 19/41

Bishop Trust Company  
Limited

August 18, 1941

C. Brewer & Company, Ltd.

Honolulu, T. H.

Attention: Mr. Chas. H. Merriam, Manager,  
Land Department

Re: Estate of L. L. McCandless, Deceased.  
Expiration of Lease—L. L. McCandless to  
Honolulu Plantation Company of various  
lands in Manana-Iki, Waiawa and Ka-  
lauao, Ewa, Oahu, Issued October 20, 1909,  
Recorded in Book 320, Page 356.

**Gentlemen:**

Reference is made to your letter of April 9, 1941,  
File 476-CHM, addressed to Mr. Lester Marks and  
Bishop Trust Company, Limited.

The contents of your lease (letter) have been  
very carefully discussed with Mr. Marks and we are  
authorized to advise you that the continued occupa-  
tion of the land demised by the above mentioned  
lease will be permitted for an indefinite period,  
subject to either the issuance of a new tenancy or  
the sale of the land, or failing both such procedures,  
then upon the issuance of two years notice that the  
tenancy at will is to be terminated. This consent

is specifically given by A. Lester Marks, Executor, and Bishop Trust Company, Limited, Administrator C.T.A. of the estate of L. L. McCandless, Deceased, and is to be binding only during the administration of the probate estate at the end of which period our joint responsibility for the property in question will cease and come under the control of the Trustees under the will and of the estate of L. L. McCandless, deceased.

Yours very truly,

/s/ E. BENNER, JR.,

Asst. Vice-President.

EB:BP

Honolulu Plantation Co. Land File Subject No. 155.

This Indenture of Lease made this 20th day of October, 1909, between L. L. McCandless, hereinafter called the "Lessor," which expression shall include his heirs, executors, administrators and assigns, party of the first part, and the Honolulu Plantation Company, a corporation duly organized and existing under the laws of the State of California and legally doing business in the Territory of Hawaii, hereinafter called the "Lessee," which expression shall include the Lessee and its successors and assigns, party of the second part;

Witnesseth:

That the Lessor in consideration of the rents hereunder reserved and of the covenants herein contained and on the part of the Lessee to be observed

and performed, does hereby demise and lease unto the Lessee all the following pieces or parcels of land, all situate on the Island of Oahu, Territory of Hawaii:

(1) All that certain parcel of land situate at Mananaiki, District of Ewa, and more particularly described in R.P. 871, L.C.A. 7732;

(2) All that certain parcel of land situate at Waiawa, District of Ewa, and more particularly described in R.P. 223, L.C.A. 9373;

(3) All that certain parcel of land situate at Waiawa, District of Ewa, and more particularly described in R.P. 208, L.C.A. 9377, to Lio;

(4) All that certain parcel of land situate at Mananaika, District of Ewa, and more particularly described in R.P. 870, L.C.A. 9378;

(5) All that certain parcel of land situate at Kachai, Mananaiki, District of Ewa, and more particularly described in R.P. 6240, L.C.A. 7723;

(6) All that parcel of land at Kapaloa, Waiawa, District of Ewa, and more particularly described in R.P. 875, L.C.A. 9376;

(7) All that certain parcel of land situate at Kaonohi, Kalauao, District of Ewa, and more particularly described in R.P. 4813, L.C.A. 6156E to Naue;

(8) All that certain parcel of land situate at Kalauao, District of Ewa, and more particularly described in R.P. 749, L.C.A. 9297;

(9) All that certain parcel of land situate at Kalauao, District of Ewa, and more particularly described in R.P. 2860, L.C.A. 9404, to Nowelo, and



being the same land described in the lease dated December 15, 1898, from Keaka Kaina to Yong Kan, and recorded in Liber 185, on page 175 et seq., Hawaiian Registry of Deeds.

(10) All that certain parcel of land situate at Kalauao, District of Ewa, and more particularly described in R.P. 450, L.C.A. 6158, to Pao; and being the same premises described in said lease from Keaka Kaina to Yong Kan.

Paragraphs 9 and 10 in the lease L. L. McCandless to Honolulu Plantation Co. in Book 320, page 356, are intended to include a large portion of L.C.A. 9404, and a portion of L.C.A. 8324, North of the river, and South of the road, containing an area of 3.1 acres. The reference to L.C.A. 6158 is an error, and should not be considered at all, as said award is located about 1800 feet South West of the Yong Kan leased land, which comprises portions of L.C.A. 9404 and 8324.

Land Dept. C. Brewer & Co., Ltd., per Chas. H. Merriam.

(11) All that certain parcel of land situate at Kalauao, District of Ewa, containing an area of 3½ acres more or less, and more particularly described in that certain indenture of lease dated the 24th day of October 1898, between Kuohao and Young Chung, and which said lease is recorded in Liber 184, on pages 434-435, Office of the Registrar of Conveyances in Honolulu;

(1) All that certain parcel of land situate at Kalauao, District of Ewa, and more particularly described in R.P. 3082, L.C.A. 5844-9350, to Puleui,

containing an area of 7.58 square chains, and constituting and being the same premises conveyed to said L. L. McCandless by deed of Haneoo and husband dated May 22, 1901, and recorded in Liber 223, on page 190, records of said Registrar's office;

(13) All that certain parcel of land situate at Mananaiki, District of Ewa, and more particularly described in R.P. 159, and containing an area of 10.96 acres; excepting and reserving therefrom however, all that portion of said premises which is not now or has not been under cultivation..... by said lessee and lying easterly of its present cane fields;

(14) All that certain parcel of land situate at Kalauao, District of Ewa, and more particularly described in R.P. Grant 169 to W. E. Gill, and containing an area of 16.4 acres more or less, saving, reserving and excepting however therefrom all that portion of said Grant more particularly **described as follows:**

Commencing at the East corner of the lot at angle of fence on the makai side of Government Road and running:

1. N. 48° 10' W. true 244 feet along Alaeauui to stream,
2. S. 60° 15' W. true 430 feet down stream,
3. S. 18° 10' E. true 187 feet along remaining portion of Grant 169 along Kuauna to post on Kula land,
4. S. 5° 5' W. true 154 feet along same along fence,

5. S.  $29^{\circ} 30'$  W. true 172 feet along same along fence,
6. S.  $54^{\circ} 15'$  W. true 148 feet along same along fence to large Kiawe tree a short ways mauka of old Rice floor;
7. S.  $41^{\circ} 5'$  E. true 70 feet along same along fence;
8. N.  $51^{\circ} 50'$  E. true 671 feet along Paaiau L.C. Award 5365 to W. Steven along fence; thence
9. N.  $29^{\circ} 35'$  E. true 302 feet along same along fence to initial point. Area 5.25 acres.

All of the water on the said premises hereinabove reserved and designated as 5.25 acres is not reserved however, but the right to use all surplus water from the springs on said land reserved, is hereby granted, demised and let to the Lessee for the term of this lease.

To Have and to Hold the premises hereby demised unto the said lessee for the term of thirty (30) years from January 1, 1910, the lessee yielding and paying during said term unto the said lessor for the several premises hereby demised annual rents as follows, to wit:

Fifteen Dollars (\$15.) for premises heretofore described in (1)

Twenty Dollars (\$20.) for premises heretofore described in (2)

Thirty-five Dollars (\$35.) for premises heretofore described in (3)

Twenty-five Dollars (\$25.) for premises heretofore described in (4)

Fifty-six Dollars (\$56.) for premises heretofore described in (5)

Fifty-two Dollars (\$52.) for premises heretofore described in (6)

Thirty Dollars (\$30.) for premises heretofore described in (7)

Thirty Dollars (\$30.) for premises heretofore described in (8)

Thirty-seven and a half Dollars (\$37.50) for premises heretofore described in (9) and (10)

Sixty Dollars (\$60.) for premises heretofore described in (11)

Thirty Dollars (\$30.) for premises heretofore described in (12)

Three Hundred Twenty-five Dollars (\$325.) for **premises** heretofore described in (13)

Five Hundred Fifteen Dollars (\$515.) for premises heretofore described in (14)

being a total annual rental of \$1230.50 payable semi-annually in advance on the first days of January and July in each and every year without deduction.

Provided However, and It Is Understood and Agreed that if Hana L. Pooloa is living on January 1, 1917, this lease as far as it affects the premises described in No. (14) shall be subject to the life interest of said Hana L. Pooloa from said date of January 1, 1917, for the rest and remainder of her natural life after said date, and in such event the rent for the premises described in No. (14) during the lifetime of said Hana L. Pooloa from and after said date of January 1, 1917, shall cease, and the same shall become again payable at the

aforesaid rate upon her death, and said L. I. McCandless will use his best endeavors to obtain a lease from said Hana L. Pooloa for said lessee from **said date of January 1, 1917**, for the rest of her natural life after said date at an annual rental not exceeding Five Hundred Fifteen Dollars (\$515.), for all of the premises described in No. 14.

And the Lessor hereby covenants with the Lessee that upon payment by the Lessee of the rent as aforesaid and upon observance and performance of the covenants by the Lessee hereinafter contained, the Lessee shall peaceably hold and enjoy the said demised premiss for the term hereby demised, without hindrance or interruption by the Lessor or any other person or persons lawfully or equitably claiming by, through or under him, except as to the **said interest of Hana L. Pooloa**, from and after January 1, 1917, as aforesaid. And the said Lessor and the said Lessee hereby agree that the rentals hereby agreed to be paid by the Lessee to the Lessor shall be in lieu of all rentals now paid by the Lessee to the Lessor for any and all of the premises hereby demised, and that all existing leases between the Lessor and the Lessee of the said premises hereby demised, or part thereof, are hereby cancelled.

And the Lessee hereby covenants with the Lessor that it (the Lessee) will pay said rent in U. S. Gold Coin in manner aforesaid without any deduction; that it will also pay all taxes, rates, assessments, impositions, duties and other outgoings of every description to which said premises or any part thereof may during said term become liable, and



whether the same taxes, rates, assessments, impositions, duties and other outgoings are or shall be assessed to or be payable by law by either the Lessor or Lessee; that it will not make or suffer any strip or waste or unlawful, improper or offensive use of said premises or of any improvements thereon; that it will permit the Lessor or his agents at all seasonable times during the term hereby demised to enter the said premises and examine the condition thereof; that it will not without the written consent of the Lessor assign this lease or any interest therein, except by way of mortgage or deed of trust to secure bonded indebtedness, or underlet the premises or any part thereof without such consent; and that at the end of said term or other sooner determination of this lease it will peaceably deliver up to the Lessor possession of the said demised premises, together with all erections and improvements upon or belonging to the same by whomsoever made.

And it is mutually understood and agreed by the parties hereto that in the event that that certain indenture by way of exchange lease this day made and entered into by the said Honolulu Plantation Company, as party of the first part, and said L. L. McCandless, as party of the second part, shall be terminated by the re-entry of either party thereto pursuant to the provisions therefor in said indenture contained, then these presents and the estate hereby created shall likewise cease and determine.

Provided However, that if the Lessee shall fail to pay the said rent as above set forth or shall fail to faithfully observe or perform any of the cove-



nants herein contained and on its part to be observed and performed, or shall abandon the said premises, the Lessor may after thirty (30) days written notice of any such failure or non-observance, and said failure or non-observance still continuing after said thirty (30) days, re-enter said demised premises and at his option terminate this lease without service of legal process and without prejudice to any other remedy or right of action for arrears of rent or for any other proceeding for breach of contract.

And it is hereby expressly agreed and declared that the acceptance of rent by the Lessor shall not be deemed to be a waiver by him of any breach by the Lessee of any covenant herein contained.

In Witness Whereof, the said parties hereto have hereunto and to another instrument of the same date and tenor set their hands and seals the day and year first above written.

/s/ L. L. McCANDLESS.

HONOLULU PLANTATION  
COMPANY,

By /s/ GEO. ROSS,

Its Attorney in Fact.

And I, Kahiliopua Manuel, widow of Antone Manuel, do hereby lease and demise unto the Honolulu Plantation Company, all my right, title and interest, being my dower interest, in the premises described in R. P. 159, subject to reservation mentioned in the foregoing lease for the term of thirty (30) years from January 1st, 1910, or until my

death if within thirty years, and upon the terms mentioned in the foregoing lease, and do hereby consent to and approve of the foregoing lease dated October 20, 1909, by L. L. McCandless to Honolulu Plantation Company, provided that one-third of the rent of Three Hundred Twenty-five Dollars (\$325.) per annum be paid to me during said term of thirty years, or until my death, if within thirty years.

In Witness Whereof, I have hereunto set my hand and seal this.....day of October, 1909.

.....

The original of this document recorded as follows: Territory of Hawaii, Office of Bureau of Conveyances. Received for record this 9th day of November A. D. 1909 at 11:34 o'clock A.M. and recorded in Liber 320 on Pages 356-361 and compared. (Signed) Chas. H. Merriam, Registrar of Conveyances.

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## HONOLULU PLANTATION EXHIBIT 9-B

Admitted in Evidence 12-3-46

Agreement made this 6th day of November, 1939, by and between Honolulu Plantation Company, a California corporation, doing business in the Territory of Hawaii, hereinafter called the First Party, and L. L. McCandless, of Honolulu, City and County of Honolulu, Territory of Hawaii, hereinafter called the Second Party.

Witnesseth:

Whereas, the said First Party and the said Second Party duly entered into an exchange lease dated October 20th, 1909, which said lease is not recorded, whereby the said First Party demised to said Second Party a certain area of land in the Ahupuaa of Waimalu, District of Ewa, Island of Oahu, lying mauka of the cane fields of the said First Party and extending to the Forest Reserve line, as in said Exchange Lease more particularly described, and

Whereas, by the said Exchange Lease the said Second Party demised to said First Party certain parcels of land or interests therein, situate in the Ahupuaa of Halawa, said District of Ewa, as in said Exchange Lease, are more particularly described, and

Whereas, the said First Party and the said Second Party desire to extend the said Exchange Lease for a period of Five (5) Years from September 1, 1939, subject, however, to certain additional agreements as herein set forth;

Now, Therefore, This Agreement Witnesseth:

1. That the said First Party and the said Second Party do hereby extend the said above mentioned Exchange Lease for a term of Five (5) Years from September 1, 1939, upon the same terms and provisions as therein set forth except as altered by this agreement.

2. That the said Second Party hereby demises and leases to said First Party for the term of Five

Years commencing September 1, 1939, and ending August 31, 1944, all right, title and interest of the said Second Party in and to the following additional lands acquired by said Second Party since October 20, 1909:

(a) R.P. 765 L.C.A. 9332, Apana 2, area 0.156 acre

(b) R.P. 758 L.C.A. 2096, Apana 1, area 0.620 acre

(c) R.P. 455 L.C.A. 2016, Apanas 1 and 2, area 0.326 acre

(d) Together with any other lands or interest in lands owned by said Second Party in said Halawa with the exception of Apana 1 R.P. 765 L.C.A. 9332 hereinbelow reserved, and said First Party hereby accepts said tenancy subject to the terms of said Exchange Lease and also subject to the terms hereof.

3. That said Second Party reserves from this demise all of Apana 1, R.P. 765 L.C.A. 9332 to Kaheana. It is agreed by and between the parties hereto that the non-inclusion of said Apana 1, R.P. 765 L.C.A. 9332 shall not in any way jeopardize any of the rights whether water, riparian or otherwise that may belong to said Apana 1, R.P. 765 L.C.A. 9332 now claimed by the Second Party hereto.

4. That said First Party hereby agrees that it will waive the restriction set forth in the above mentioned exchange lease that limits the use of the Waimalu land to pasture purposes only and that for the period of five years ending August 31, 1944,

the said Second Party shall have the right to use said land in any agricultural way desired except that the land shall not be used for the cultivation of sugar cane. The land referred to in this paragraph is hereby understood and agreed to mean the land lying between Waimalu Stream and the boundary of the land of Waiau and to be the area mauka of the present cane fields and extending to the forest reserve line.

5. The parties hereto mutually agree to delete and make void all of that paragraph numbered “(1)” on page 4 of said Exchange Lease that grants to said First Party a right of way for a pipe line under, over and across the lands owned or held by said Second Party in Waimalu Valley lying mauka of the government road and makai of the pumping station of said First Party.

6. That said First Party will pay to said Second Party annually, in advance, on the first day of September of each year during the term of this Agreement, the sum of Three Hundred Dollars (\$300.00) as rental to said Second Party of the right to maintain its Pump Pipe Line across L.C.As. 2137 Apana 2, 2055 Apana 1, 2016 Apana 1, and 2131 Apana 2, or any other land belonging to the party of the second part lying between Halawa Pump No. 1 and mauka government highway,—and for the use of the premises described in paragraph 2 hereinabove as (a), (b), (c) and (d).

This Agreement shall be binding upon the heirs, executors, administrators, successors and assigns of each of the parties hereto.



In Witness Whereof, the said First Party has caused this instrument to be executed in quadruplicate on the 13th day of November, 1939, and the said Second Party has likewise caused this instrument to be executed in quadruplicate on the 6th day of November, 1939.

HONOLULU PLANTATION  
COMPANY,

By /s/ P. E. SPALDING,  
Its Attorney-in-fact.

/s/ L. L. McCANDLESS.

Territory of Hawaii,  
City and County of Honolulu.—ss.

On this 13th day of November, A.D., 1939, before me personally appeared P. E. Spalding, to me personally known, who, being by me duly sworn, did say that he is attorney-in-fact of Honolulu Plantation Company, duly appointed under power-of-attorney dated the 10th day of January, 1935, recorded in Book 1270 Page 150; and the foregoing instrument was executed in the name and behalf of said Honolulu Plantation Company by said P. E. Spalding as its attorney-in-fact; and said P. E. Spalding acknowledged said instrument to be the free act and deed of said Honolulu Plantation Company.

/s/ CHAS. H. MERRIAM,  
Notary Public, First Judicial Circuit, Territory of  
Hawaii.



Territory of Hawaii,  
City and County of Honolulu.—ss.

On this 6th day of November, A. D., 1939, before me personally appeared L. L. McCandless, to me known to be the person described in and who executed the foregoing instrument and acknowledged that he executed the same as his free act and deed.

/s/ HAROLD C. NOTT,  
Notary Public, First Judicial Circuit, Territory of  
Hawaii.

This Indenture made this 20th day of October, (1909) between Honolulu Plantation Company, a California corporation doing business in the Territory of Hawaii, party of the first part, and L. L. McCandless, of Honolulu, in said Territory of Hawaii, party of the second part.

Witnesseth: That the party of the first part, in consideration of the lease hereinafter to it made by the party of the second part, and of the covenants and conditions hereinafter expressed and to be observed and performed by the party of the second part, does hereby lease and demise unto said party of the second part, for pasturage purposes only, the following lands in the District of Ewa, on the Island of Oahu, in said Territory:

All the portion or portions of the lands demised to John A. Buck (and by him held thereunder for the use and benefit of said Honolulu Plantation Company) by lease from Herbert and Walter Austin, Executors and Trustees under the Will of James W. Austin, deceased, dated May 3rd, 1898,

recorded in the Registry Office in said Honolulu in Liber 184, pages 436-443, and also all the portions of the land demised to said Honolulu Plantation Company by Ariana E. Austin and others by lease dated September 21st, 1906, recorded in said Registry Office in Liber 288, pages 24-28, which lie mauka or above the present cane fields of said party of the first part, the same being now pasture lands; the lower or makai boundary line of said premises hereby intended to be demised is as follows, to wit:

Beginning at a point on the Waiau boundary of the land demised by said Austin Estate Lease of May 3rd, 1898, on a line forty feet mauka of the mauka edge of the present irrigation ditch situate mauka of the cane fields lying farthest mauka of the party of the first part, and thence across said premises demised by said lease of May 3rd, 1898, following said forty foot line mauka of said irrigation ditch to a point on the westerly edge of a branch of Waimalu Gulch, thence running in a south-easterly direction down said branch gulch of Waimalu Gulch to a fence bordering on a canefield in Waimalu Gulch immediately opposite and near a gate on the road leading mauka in Waimalu Gulch. Excepting and Reserving to the party of the first part all water, water rights, and privileges belonging or appurtenant to or connected with said land; provided however, that the said party of the second part shall have the right to use so much of said water as is now undeveloped on said lands hereby demised as may be necessary for his stock

pasturing on said lands hereby demised. And reserving also all rights by said leases from the Austin Estate respectively given to the lessees thereunder to build waterheads and flumes and to run ditches, flumes, pipes and trestles on said demised lands, and all rights of way and privileges in connection therewith, as granted by said leases or either of them to the lessees thereunder, for the purposes therein mentioned; and subject further to all reservations, terms, stipulations and conditions in said leases or either of them contained for the benefit of the lessors thereof, and all other covenants therein with respect to the use of the demised lands. But the foregoing reservations shall not prejudice or affect in any way the existing rights of the party of the second part in or to the water of the Waimalu Stream and its tributaries.

To Have and to Hold the said demised land (subject to said exceptions and reservations) unto the said party of the second part, his executors, administrators and assigns, for the term of thirty (30) years from the first day of September 1909, without payment of rent and by way of exchange for the lease and the accompanying conditions and agreements hereinafter set forth on the part of the party of the second part in favor of the party of the first part.

And said party of the second part, in consideration of the premises and the foregoing lease to him made by the party of the first part, and the covenants of the party of the first part hereinafter expressed, does hereby lease and demise unto said

party of the first part all and singular his lands and interests in all lands whatsoever belonging to said party of the second part situate in Halawa, in said District of Ewa, including the following:

1. All the lands described in R. P. 770, L. C. A. 2137, to Williams (two apanas), and R. P. 767, L. C. A. 2055, to Williams (two apanas), excepting the dower interest of Kahalauaola Williams, widow of John Williams.

2. An undivided one-eighteenth ( $1/18$ ) interest (representing .217 of an acre out of an entire area of 3.899 acres) in the land described in R. P. 763, L. C. A. 1983, to Kapule, (one apana).

3. An undivided five-thirty-sixths ( $5/36$ ) interest (representing .114 of an acre out of an entire area of .819 of an acre) in the land described in R. P. 762, L. C. A. 2042, to Kauohilo (two apanas).

4. An undivided one-third ( $1/3$ ) interest (representing 1.069 acres out of an entire area of 3.206 acres) in the land described in R. P. 769, L. C. A. 1996 to Naea (one apana).

5. All of the land described in R. P. 457, L. C. A. 2131 to Kanihoalii, 1.96 acres (two apanas).

6. An undivided  $1/3$  interest in the land described in R. P. 765 L. C. A. 9332 Apana 1 to Kaheana.

7. Also all other lands and interests in lands of the party of the second part in said Halawa, and now owned by him.

To Have and To Hold the said Halawa lands, whether hereinabove specifically named or described or not, unto the said party of the first

part, its successors and assigns, for the said term of thirty (30) years from September 1st, 1909, without payment of rent and by way of exchange for the lease of the lands hereinabove demised by the party of the first part to the party of the second part and the accompanying conditions and covenants herein contained on the part of the party of the first part in favor of the party of the second part.

It Is Hereby Expressly Conditioned and Agreed between said parties respectively:

1. That the party of the first part shall have a full and sufficient right of way, subject to rights of tenants now existing under existing leases, for a pipe line under, over and across any and all lands owned or held by the party of the second part mauka of the Government Road in Waimalu Valley, and makai of the present pumping station of the party of the first part in said Waimalu Valley, the same to be located by mutual agreement of the parties hereto, such right of way to be co-terminous with this lease, and said pipe line to be laid underground at such points as may be necessary so as not to interfere with the cultivation of said lands, and so as not to obstruct the existing road leading to lands of the party of the second part in Waimalu Valley, or the existing auwai in said valley leading from Waimalu Stream to lands makai.

2. That this lease and agreement shall supersede and displace all existing leases of lands in Halawa from the party of the second part to the



party of the first part, and no further rent, or claims for any unpaid or back rents, shall hereafter be collectable or claimed from the party of the first part by the party of the second part under any heretofore existing lease or leases, the same being hereby waived by the party of the second part; and also that the party of the second part hereby expressly waives all claims or rents or compensation for use and occupation of any and all lands or any interest therein of the party of the second part heretofore used or occupied by the party of the first part, under disputed ownership or otherwise, particularly including herein a waiver of all claims for rent of, or use and occupation of, the kuleana (two apanas) described in R. P. 457, L. C. A. 2131, in said Halawa, and all costs and expenses of litigation concerning any and all lands situate in said Halawa.

3. That the party of the second part shall at his own cost, not later than December 21st, 1909, construct, and during the term hereof maintain and keep in repair, a stock-proof fence along the upper boundary of said pasture land, along the line of said forest reserve; and at like expense also suitably fence the Waiau and makai boundaries of said pasture lands not later than March first, 1910, and during the term hereof will keep the same in repair. He may remove and utilize the fence now crossing said land at or near the 650 feet contour line for the purpose only of constructing the makai boundary fence of the premises hereby demised to said party of the second part.



Also, during said term, the party of the second part shall not suffer any trespass upon or injury or damage to the lands or crops of the party of the first part, or to the forest reserve mauka of said pasture lands, by any live stock coming or escaping from said pasture lands, and will hold harmless and indemnify the party of the first part from or for any such damage or injury, or from or for any liability to the lessors in said Austin Estate leases, arising from any such trespass or injury, and the said party of the second part will observe and perform all other the terms and conditions and stipulations of the said leases from the said Austin Estate dated respectively September 23, 1906, and May 3rd, 1898, on the part of the lessee to be observed and performed, saving and excepting covenants as to the payment of rents, taxes, duties and assessments.

4. That the party of the first part will release from that certain mortgage and the indebtedness thereby secured, represented by a certain note and mortgage made by Kahele Napuela and others to J. K. Kahookano, Trustee, dated September 14, 1899, recorded in said Registry Office in Liber 196, pages 300-301, for \$300 and interest, the interest of the party of the second part in the land described in R. P. 769, L. C. A. 1996 to Naea, which said mortgage was assigned to the party of the first part by assignment dated November 16, 1899, recorded in Liber 199, page 301.

5. That the party of the first part shall have the right at any time or times to take back and

enter into possession of, any portion or portions of the said pasture lands hereinabove demised to the party of the second part, lying below or makai of the 650 foot contour line, for the cultivation of sugar-cane, and the party of the second part will surrender the same accordingly, the cost of moving the fence to be borne by the party of the first part; and in every case of any such taking of possession there shall be allowed and paid by the party of the first part to the party of the second part by way of rebate or equalization of rental value a sum of money at the rate of thirty cents (30 cents) per acre per annum for the area so taken (payable each year unless the parties shall otherwise agree.) Also, that in case the party of the first part shall lose or shall not obtain or retain the quiet and uninterrupted possession and use of any of the said Halawa lands, or interest in said lands demised by this lease, by reason of the assertion of a paramount title to said lands or said interests therein, there shall be allowed and paid by the party of the second part to the party of the first part a sum at the rate of Fifty Dollars (\$50) per acre per annum (payable annually unless said parties shall otherwise agree) for such lands so lost to said party of the first part, together with any and all loss, damage or injury sustained by said party of the first part to crops or improvements including costs of pipes, ditches and flumes on said lands or interests therein at the time of such dispossession by reason of said loss of or said interruption to the possession of said lands to it hereby demised.

7. That neither party will, without the written consent of the other, assign this lease or any interest in the demised premises except by way of mortgage or deed of trust to secure bonded indebtedness, or underlet the same or any part thereof without such consent.

That each of the parties hereto shall pay the taxes and assessments on the land by it or him demised, but the taxes and assessments on the improvements on the demised premises shall be paid by the party placing said improvements or causing the said improvements to be placed upon the land.

Provided however, that if either of the parties hereto shall fail to perform or observe any of the covenants, terms, or conditions herein contained on its or his part respectively to be performed or observed, after ninety (90) days' written notice to it or him by the other, and the failure or non-observance after said notice still continuing, or shall abandon the said respective premises, either of said parties may at once re-enter the premises by it or him respectively demised, or any part thereof for the whole, and expel the party who has thus failed to observe or perform any of its said covenants, terms or conditions, and those claiming under him or it, or at its or his option terminate the lease of the lands or interests demised by it or him to the other, without service of notice (other than said ninety days' notice) and without service of legal process and without prejudice to any right of action or other proceeding for breach of con-

tract and without liability for any loss or damages arising out of or resulting from such entry or expulsion, and that the party claiming a default and being restored to the possession of the lands by him or it demised will then surrender to the defaulting party the premises by it or him hereby demised, and the respective estates hereby created shall thereupon cease and determine.

It Is Hereby Understood and Agreed that all of the terms, conditions and stipulations hereof shall be binding and obligatory upon the respective parties hereto and their executors, administrators, successors and permitted assigns.

In Witness Whereof the parties hereto have caused these presents to be duly executed the day and year first above written.

HONOLULU PLANTATION  
COMPANY,

By /s/ GEO. ROSS,

Its Attorney in-Fact.

/s/ L. L. McCANDLESS.

(Duly Acknowledged.)

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HONOLULU PLANTATION EXHIBIT 9-C

(Admitted in Evidence 12-3-46)

This Indenture of Lease made this 28th day of December, 1929, by and between L. L. McCandless, of Honolulu, City and County of Honolulu, Territory of Hawaii, Lessor, and Honolulu Planta-

tion Company, a California corporation doing business in the Territory of Hawaii, Lessee,

Witnesseth:

That the Lessor, in consideration of the rent hereinafter reserved and of the covenants herein contained and on the part of the Lessee to be observed and performed, does hereby demise and lease unto the Lessee all those certain pieces or parcels of land situate at Kalauao in the District of Ewa, City and County of Honolulu, Territory of Hawaii, more particularly described as follows:

1. Land known as Philip Manuel, Plantation Lease No. 274, R. P. 751, L. C. A. 6184 to Ino., \$60.00.

2. Old Lease No. 201, known as Polly Henry Land R. P. 171, to Kuaana, \$180.00.

3. Land known as Kupau, Old Lease No. 124 R. P. 750, L. C. A. 5577 to Kamakahiki, all that portion lying Makai Government Road, \$50.00.

4-a. Old Lease No. 263, R. P. 449, L. C. A. 9400 Apana 2, to Hilo, no Kaoio.

5-b. R. P. 747, L. C. A. 6104 to Mahiai.

6-c. R. P. 2860 L. C. A. 9404 to Nawelo, being the Hakamakalane, portion.

7-d. R. P. 450, L. C. A. 6158 to Pao.

8-e. R. P. 3551 L. C. A. 557 6Apana 3, to Kua-wahie, \$187.68.

To Have and To Hold the same for the full period of fifteen (15) years from the first day of January, 1930, at an annual rental of Four Hun-



dred Seventy-seven and 68/100 Dollars (\$447.68) payable semi-annually, in advance, on the first day of January and the first day of July of each year during the term hereof, without any deduction.

And the Lessor hereby covenants with the Lessee that upon payment by the Lessee of the rent as aforesaid, and upon observance and performance by the Lessee of the covenants hereinafter contained, the Lessee shall peaceably hold and enjoy the said demised premises for the term demised without hindrance or interruption by the Lessor or any person or persons lawfully or equitably claiming by, through or under him.

And the Lessee hereby covenants with the Lessor as follows:

That it, the Lessee, will pay the said rent in United States currency, at the office of the Lessor in Honolulu, in manner aforesaid, without any deduction and without any notice or demand;

That it will also pay all taxes, rates, assessments, impositions, duties, charges and other outgoings of every description to which the said premises or the Lessor or Lessee in respect thereof are now or may during the said term become liable, and whether the same taxes, rates, assessments, impositions, duties, charges and other outgoings are or shall be assessed to or be payable by law by either the Lessor or Lessee;

That it will, at its own expense, during the whole of the said term, make, build, maintain and repair all fences, sewers, drains and roads which may be required by law to be made, built, main-



tained and repaired upon or adjoining or in connection with or for the use of the said premises or any part thereof;

That it will at its own expense from time to time and at all times during the said term well and substantially repair, maintain, amend and keep all buildings and improvements now or hereafter built on the land hereby demised with all necessary reparations and amendments whatsoever;

That it will permit the Lessor and his agents at all seasonable times during the said term to enter the said premises and examine the state of repair and condition thereof and will repair and make good all defects of which notice shall be given by the Lessor or his agents within thirty days after the giving of such notice.

That it will, during the whole of the said term, keep the said premises in a strictly clean and sanitary condition and observe and perform all laws, ordinances, rules and regulations for the time being applicable to said premises and will indemnify the Lessor and his estate and effects against all actions, suits, damages and claims by whomsoever brought or made by reason of the non-observance or non-performance of said laws, ordinances, rules and regulations and of this covenant;

That it will not cut down, fell or injure or suffer to be cut down, felled or injured any trees or saplings now or hereafter growing upon the land hereby demised, except only in the way of good husbandry and for the purpose of clearing the ground necessary for the erection of buildings

and/or the planting of trees or crops of economic value;

That it will not make or suffer any strip or waste or unlawful, improper or offensive use of the said premises, nor, without the consent in writing of the Lessor, mortgage, assign or sublet this lease or any part thereof or any right, title or interest thereunder, and

That at the end of said term or other sooner determination of this lease, the Lessee will peaceably deliver up to the Lessor possession of the land hereby demised, together with all erections or improvements upon or belonging to the same by whomsoever made, in good repair, order and condition.

Provided, However, and this demise is upon this condition, that if the Lessee shall fail to pay the said rent or any part thereof within thirty days after the same becomes due, whether the same shall or shall not have been legally demanded, or shall become bankrupt or shall fail faithfully to observe or perform any of the covenants herein contained and on the part of the Lessee to be observed and performed or shall abandon the said premises, the Lessor may at once re-enter the said premises or any part thereof in the name of the whole or any one of said parcels in the name of all of said parcels, and at his option terminate this lease without service of notice or legal process and without prejudice to any other remedy or right of action for arrears of rent or for any preceding or other breach of contract;

It Is Mutually Agreed by and between the parties hereto that if, at the expiration of the term hereby demised there shall be growing upon the demised premises or any part or parts thereof any crop or crops of cane, whether plant or ratoon, the Lessee shall have the right to retain possession of said premises until the said crop or crops mature and are harvested, paying to the Lessor rent for the said premises or the parts thereof of which possession is retained such proportion of the annual rent hereby reserved as the part or parts thereof so occupied bear to the total acreage of the demised premises, which proportion shall be computed on the percentage basis that the period of time which the said premises or portions thereof may be in the possession of the Lessee bears to 365 days.

And it is hereby expressly agreed and declared that the acceptance of rent by the Lessor shall not be deemed to be a waiver by him of any breach by the Lessee of any covenant herein contained;

That the term "premises" wherever it appears herein includes and shall be deemed or taken to include (except where such meaning would be clearly repugnant to the context) all buildings and improvements now or at any time hereafter built on the said land hereby demised: and that the term "Lessor" in these presents shall include the Lessor, his heirs, executors, administrators and assigns, and also that the term "Lessee" shall include the Lessee, its successors and permitted assigns.

In Witness Whereof the said parties hereto have

executed this instrument, in quadruplicate, the day and year first above written.

/s/ L. L. McCANDLESS,

HONOLULU PLANTATION  
COMPANY,

By /s/ R. A. COOKE,

By /s/ HORACE JOHNSON,  
Its Attorneys-in-Fact.

(Duly Acknowledged.)

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HONOLULU PLANTATION EXHIBIT 9D

(Admitted in Evidence 12-3-46)

This Indenture, made this 5th day of November A. D., 1936, by and between Francis H. I. Brown, of Honolulu, City and County of Honolulu, Territory of Hawaii, hereinafter called the "Lessor", of the first part, and Honolulu Plantation Company, a California corporation, hereinafter called the "Lessee", of the second part:

Witnesseth:

That the Lessor, in consideration of the rent hereinafter reserved, and of the covenants herein contained and on the part of the Lessee to be observed and performed, does hereby demise and lease unto the Lessee, all those certain pieces or parcels of land situate at Waimalu, District of Ewa, said City and County of Honolulu, contain-

ing an aggregate area of 5.624 acres, described as follows:

1. All the land and premises mentioned or described in R. P. 2067 L. C. A. 5649 to Kahanai-puaa, containing an area of 1.81 acres;

2. All the land and premises mentioned or described in R. P. 327 L. C. A. 5586 to Kahiki, containing an area of 0.797 acre;

Save and except a certain portion of this land required by the Territory of Hawaii for the Kamehameha Highway Realignment and designated as Parcel 28, containing an area of 4059 square feet, or 0.093 acre. The net area hereby demised being 0.704 acre;

3. All the land and premises mentioned or described in R. P. 329 L. C. A. 9407-B to Kuaalu, Apana 1 containing 1.473 acre and Apana 2 containing 0.138 acre, or a total area of 1.611 acres.

Save and except certain portions of this land required by the Territory of Hawaii for the Kamehameha Highway Realignment, and designated as follows: Parcel 27, containing 4286 square feet or 0.098 acre out of Apana 1 of this land, and Parcel 26, containing 866 square feet, or 0.02 acre out of Apana 2 of this land, or a total area of 0.118 acre. The net area hereby demised being 1.493 acres.

4. All the land and premises mentioned or described in R. P. 385 L. C. A. 9356, Apana 3, to Kuheuheu containing an area of 1.617 acres.

The foregoing premises were acquired by the Lessor herein from Hong Chack and wife, by deed dated April 26, 1930, recorded in the office of the



Registrar of Conveyances in Honolulu in Book 1061, Page 340.

To Have and To Hold the same together with all rights, privileges and appurtenances to the same belonging or appertaining, unto the Lessee for the term of Five (5) years from October 1, 1936.

Yielding and Paying therefor yearly and every year during the said term unto the Lessor, rental of One Hundred Dollars (\$100.00) per annum, in advance, on the first day of October in each and every year during the continuance of this lease.

And the said Lessor hereby covenants with the said Lessee and its successors and assigns that it shall peaceably hold and enjoy the said premises for the term aforesaid.

And said Lessee, for itself, its successors and assigns, does hereby covenant and agree to and with the said Lessor, his heirs and assigns, that it and its successors and assigns, will pay the said rent in manner aforesaid, that it will pay the taxes on said demised premises, and at the end of said term or any sooner determination of this lease will quietly and peaceably quit and deliver up the land and premises hereby demised to said Lessor or his heirs or assigns.

It Is Mutually Agreed By and Between the Parties hereto that if, at the expiration of the term hereby demised, there shall be growing upon the demised premises or any part or parts thereof any crop or crops of cane, whether plant or ratoon, the Lessee shall have the right to retain possession of said premises until the said crop or crops mature



and are harvested—but for no longer time than a period of six (6) months beyond the termination of this lease on September 30, 1941—paying to the Lessor rent for the said premises or the parts thereof of which possession is retained such proportion of the annual rent hereby reserved as the part or parts thereof so occupied bear to the total acreage of the demised premises, which proportion shall be computed on the percentage basis that the period of time which the said premises or portions thereof may be in the possession of the Lessee bears to 365 days.

In Witness Whereof, the said Lessor has caused this instrument to be executed in quadruplicate on the 5th day of November, 1936, and the said Lessee has likewise caused this instrument to be executed in quadruplicate on the 10th day of November, 1936.

/s/ FRANCIS H. I. BROWN,

HONOLULU PLANTATION  
COMPANY,

/s/ R. A. COOKE,  
Attorney-in-Fact.

(Corporate Seal.)

(Duly Acknowledged.)

#### LEASE

Francis H. I. Brown to Honolulu Plantation Company. Term: 5 years from Oct. 1, 1936.

The original of this document recorded as fol-

lows: Territory of Hawaii, office of Bureau of Conveyances. Received for record this 10th day of November A. D., 1936, at 11:40 o'clock A. M., and recorded in Liber 1357 on Pages 474-477, and compared.

/s/ M. N. HUCKSTEIN,  
Registrar of Conveyances.

The term of that certain lease given by Francis H. I. Brown, as Lessor, to Honolulu Plantation Company, as Lessee, dated November 5, 1936, duly recorded in the office of the Registrar of Conveyances in Honolulu in Book 1357, Page 474, is hereby extended for the period of Five (5) years from the expiration thereof, namely October 1, 1941, subject to the like rent as therein mentioned, and to all the provisos, covenants and agreements therein contained, and thereto, the undersigned, Lessor and Lessee, mutually bind themselves; it being mutually agreed, however, that the extension of lease hereby granted shall be subject to the Lessor's right to cancel same upon giving ninety (90) days' notice in writing to the Lessee which notice shall be subject to the right of the Lessee to continue to have possession of the said premises for such additional time as may be required to properly mature and harvest the then standing crop of cane.

In Witness Whereof, the said Lessor has caused this instrument to be executed in quadruplicate on the 23rd day of September, 1941, and the said Lessee has likewise caused this instrument to be

executed in quadruplicate on the 23rd day of September, 1941.

/s/ FRANCIS H. I. BROWN,

HONOLULU PLANTATION  
COMPANY,

By /s/ L. D. LARSEN,

Its Attorney-in-Fact.

(Corporate Seal.)

(Duly Acknowledged.)

The original of this document recorded as follows: Territory of Hawaii, office of Bureau of Conveyances. Received for record this 25th day of September A. D., 1941, at 10:05 o'clock A. M., and recorded in Liber 1679 on Pages 197-198 and compared. (Signed) M. N. Huckstein, Registrar of Conveyances.

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HONOLULU PLANTATION EXHIBIT 9-E

(Admitted in Evidence 12-3-46)

This Indenture, made this 28th day of May, A. D., 1935, by and between Noa W. Aluli, of Honolulu, City and County of Honolulu, Territory of Hawaii, hereinafter called the "Lessor", and Honolulu Plantation Company, a California corporation, hereinafter called the "Lessee"—

Witnesseth:

That the Lessor, for and in consideration of the rents, covenants and conditions hereinafter mentioned and reserved and on the part of the Lessee

to be paid, observed and performed, does hereby demise and lease unto the said Lessee, all the following described parcels of land, containing an aggregate area of 2.161 acres, situate at Kalauao, District of Ewa, City and County of Honolulu, Territory of Hawaii, viz:

1. R. P. 743 L. C. A. 7450-B to Kaika, situate at Kauaopai, said Kalauao, containing an area of 1.08 acres.

2. R. P. 114 L. C. A. 5878 Apana 1 to Kukiiahu, situate at Kaonohi, said Kalauao, containing an area of .626 acre.

3. R. P. 114 L. C. A. 9311 Apana 3 to Kukiiahu, situate at Kaonohi, said Kalauao, containing an area of .455 acre.

To Have and To Hold the same, together with all rights, easements, privileges and appurtenances to the same belonging or appertaining, unto the Lessee for the term of five (5) years from the first day of July, 1935.

Yielding and Paying therefore unto the said Lessor an annual rental of Thirty-two and  $\frac{41}{100}$  Dollars (\$32.41), payable annually in advance, on the 1st day of July in each and every year during the term of this lease.

And the said Lessor hereby covenants with the said Lessee and its successors and assigns that it shall peaceably hold and enjoy the said premises for the term aforesaid.

And said Lessee, for itself, its successors and assigns does hereby covenant and agree to and with the said Lessor, his heirs and assigns, that it and

its successors and assigns will pay the said rent in manner aforesaid, that it will pay the taxes on said demised premises, and at the end of said term or any sooner determination of this lease will quietly and peaceably quit and deliver up the land and premises hereby demised to said Lessor or his heirs or assigns.

It Is Mutually Agreed by and between the parties hereto that if at the expiration of the term hereby demised there shall be growing upon the demised premises or any part or parts thereof any crop or crops of cane, whether plant or ratoon, the Lessee shall have the right to retain possession of said premises until the said crop or crops mature and are harvested, paying to the Lessor rent for the said premises or the parts thereof of which possession is retained such proportion of the annual rent hereby reserved as the part or parts thereof so occupied bear to the total acreage of the demised premises, which proportion shall be computed on the percentage basis that the period of time which the said premises or portions thereof may be in the possession of the Lessee bears to 365 days.

Provided, Always, and these presents are upon this condition, that in case of a breach of any of the covenants to be observed on the part of the Lessee, said Lessor may, while the default or neglect continues, without any notice or demand, enter upon the premises and thereby determine the estate hereby created; and may thereupon expel and remove, forcibly if necessary, the said Lessee and



those claiming under it, and their effects; and the acceptance of rent by said Lessor shall in no wise be or be construed to be a waiver of any breach of any of the covenants and conditions herein set forth.

In Witness Whereof, the said Lessor has hereunto and to three other instruments of like date and tenor set his hand and seal, and the said Lessee has likewise set its name by its duly appointed attorney-in-fact, under power-of-attorney dated January 10, 1935, on the day and year first above written.

(Seal)            /s/ NOA W. ALULI,

HONOLULU PLANTATION  
COMPANY,

By /s/ P. E. SPALDING.

Its Attorney-in-Fact.

(Duly Acknowledged.)

The term of that certain unrecorded lease given by Noa W. Aluli, as Lessor, to Honolulu Plantation Company, as Lessee, dated May 28, 1935, is hereby extended for the period of Three (3) years and Six (6) months from the expiration thereof, namely—July 1, 1940, subject to the like rent as therein mentioned, and to all the provisos, covenants and agreements therein contained, and thereto, the undersigned mutually bind ourselves.

In Witness Whereof, the Trustees under that certain Deed of Trust given by said Lessor dated October 30, 1933, recorded in Book 1395 Page 45,

have caused this instrument to be executed in quadruplicate on the 25th day of August, 1939, and the said Lessee has likewise caused this instrument to be executed in quadruplicate on the 26th day of August, 1939.

/s/ AIMA N. ALULI,

/s/ AUWAE L. ALULI,

/s/ NOA T. ALULI,

Trustees of Noa W. Aluli  
Estate.

HONOLULU PLANTATION  
COMPANY,

By /s/ R. A. COOKE,

Its Attorney-in-Fact.

(Corporate Seal.)

(Duly Acknowledged.)

The term of that certain unrecorded lease given by Noa W. Aluli, as Lessor, to Honolulu Plantation Company, as Lessee, dated May 28, 1935, the term of which was extended for a period of Three (3) years and Six (6) months from July 1, 1940, by unrecorded instrument dated August 25, 1941, is hereby further extended for a term of Five (5) years from January 1, 1944, subject to the like rent as therein mentioned, and to all the provisos, covenants and agreements therein contained, and thereto, the undersigned mutually bind ourselves.

In Witness Whereof, the Trustees under that certain Deed of Trust given by said Lessor dated October 30, 1933, recorded in Book 1395 Page 45,

have caused this instrument to be executed in quadruplicate on the 9th day of May, 1942, and the said Lessee has likewise caused this instrument to be executed in quadruplicate on the 26th day of May, 1942.

/s/ AIMA N. ALULI,

/s/ AUWAE L. ALULI,

/s/ NOA T. ALULI,

Trustees of Noa W. Aluli Estate.

HONOLULU PLANTATION  
COMPANY.

By s/ P. E. SPALDING,

Its Attorney-in-Fact.

(Corporate Seal.)

(Duly Acknowledged.)

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HONOLULU PLANTATION EXHIBIT 9-F

(Admitted in Evidence 12-3-46)

Liber 1627, Page 467.

This Indenture of Sublease made this 17th day of January, A. D., 1941, by and between Oahu Sugar Company, Limited, an Hawaiian corporation, hereinafter called the "Lessor", of the first part and Honolulu Plantation Company, a California corporation, hereinafter called the "Lessee" of the second part,

Witnesseth:

That the Lessor, in consideration of the rent hereinafter reserved and of the covenants herein

contained and on the part of the Lessee to be observed and performed, does hereby demise and sublease unto the Lessee, all that certain tract of land situated in the valley of Waiawa, District of Ewa, City and County of Honolulu, Territory of Hawaii, being a portion of the Ahupuaa of Waiawa as described in R. P. 4475 L. C. A. 7713, Apana 46, to V. Kamamalu, at present under lease to Oahu Sugar Company, Limited, from the Trustees of the B. P. Bishop Estate, Lease No. 6500, as recorded in the office of the Registrar of Conveyances in Honolulu in Book 1599 Page 208. Said parcel of land is generally described as follows:

Commencing at the Southerly corner of this tract of land on the Easterly side of the Waiawa stream, which point is about 300 feet Northerly of Kamehameha Highway; thence running Westerly and Northerly along the Easterly side of the Waiawa stream to a point 2400 feet, more or less, above Pump No. 6; thence crossing said stream in a Northeasterly direction along the Westerly side wall of Waiawa Valley to the Easterly side of said Waiawa stream; thence following the Easterly side of Waiawa stream to its intersection with Waimano stream; thence following the Easterly side of Waimano stream to the boundary line of the land of Manana; thence in a Southerly direction along the boundary line of the land of Manana to a ridge road; thence in a Southwesterly and Southeasterly direction along said ridge road to a point about 1250 feet above Kamehameha Highway; thence in a Southerly direction down a gulch

side and thence along said gulch side to a point about 550 feet above Kamehameha Highway; thence in a Southwesterly direction to the Easterly side of Waiawa stream, being the point of beginning, containing a net area of 167.20 acres, classified as follows:

(a) Cane land now under cultivation, 24.99 acres.

(b) Miscellaneous land (old fallow cane land), 21.11 acres.

(c) Miscellaneous land (pineapples and vegetables), 24.47 acres.

(d) Stream, waste and pali, 96.13 acres.

(e) Reservoir, 0.50 acres.

The land hereby demised being more particularly identified on a map thereof hereto attached and made a part hereof.

Being a portion of the premises demised by the Trustees of the Estate of Bernice P. Bishop to said Lessor by their Lease No. 6500, dated July 1, 1940, duly recorded in the office of the Registrar of Conveyances in Honolulu in Book 1599 Page 208.

Reserving to said Lessor a certain area designated on said plan hereto attached as "Boy Scout Camp" of an area of 2.80 acres, more or less, together with an easement right-of-way thereto from the road passing Oahu Sugar Company, Limited, Pump No. 6, as may hereafter be mutually agreed upon.

Also reserving and excepting from this demise the right to prospect, dig, bore, drill and tunnel for water on the said demised premises.

To Have and To Hold the same, together with all



rights, easements, privileges and appurtenances to the same belonging or appertaining, except as aforesaid, unto the Lessee from the first day of January, 1941, for the term of Twenty-four (24) years and Six (6) months thence next ensuing, the Lessee Yielding and Paying therefor unto the Lessor the annual rental of One Thousand and Seventy-five Dollars (\$1,075.00), semi-annually, in advance, on the first day of January and the first day of July in each and every year during said term, without any deduction and without any notice or demand.

And the Lessor hereby covenants with the Lessee that upon payment by the Lessee of the rent as aforesaid and upon observance and performance of the covenants by the Lessee hereinafter contained, the Lessee shall peaceably hold and enjoy the said demised premises for the term hereby demised, without hindrance or interruption by the Lessor or any other person or persons lawfully or equitably claiming by, through or under it.

And the Lessee hereby covenants with the Lessor as follows:

That it (the Lessee) will pay the said rent in legal currency of the United States to said Lessor at the office of its Agent, American Factors, Ltd., in Honolulu, in manner aforesaid, without any deduction and without any notice or demand.

That it will also pay all taxes, rates, assessments, impositions, duties, charges and other outgoings of every description to which said premises, or the Lessor or Lessee in respect thereof, are now or may during the said term become liable, and

whether the same taxes, rates, assessments, impositions, duties, charges and other outgoings are or shall be assessed to or be payable by law by either the Lessor or Lessee;

That it will, out of its own moneys during the whole of said term, make, build, maintain and repair all fences which may be required by law to be made, built, maintained and repaired upon, adjoining or in connection with or for the use of the said premises or any part thereof;

That it will, during the whole of the said term, keep the said premises in a strictly clean and sanitary condition and observe and perform all of the rules and regulations of the Health Authorities for the time being applicable to the said premises and will indemnify the Lessor and its estate and effects against all actions, suits, damages and claims by whomsoever brought or made by reason of the non-observance or non-performance of the said rules and regulations or of this covenant;

That it will permit the Lessor or its agents, at all seasonable times during the said term, to enter the said premises and examine the state of repair and condition thereof and will repair and make good all defects of which notice shall be given by the Lessor, or its agents, within thirty (30) days after the giving of such notice;

That it will whenever requested by the Lessor so to do, deliver up to the Lessor peaceable possession of such portion or portions of the land hereinbefore described which now is, or are, or hereafter during the continuance of the term hereof may be required or condemned for street or road widening or other-

wise for street or road purposes, without indemnity or reduction of rent;

That it will not make or suffer any strip or waste or unlawful, improper or offensive use of the said premises, or any part thereof, nor, without the consent in writing of the Lessor, assign this lease or sublet or part with the possession of the whole or any part of the said demised premises or make or suffer any alteration of any buildings, now or at any time hereafter built on the said land hereby demised;

That at the end of said term or other sooner determination of this lease the Lessee will peaceably deliver up to the Lessor possession of the land hereby demised, together with all erections and improvements upon or belonging to the same by whomsoever made in good repair, order and condition;

That it will perform and observe the covenants and agreements on the part of the Lessee set forth in that certain indenture of lease between the Trustees of the B. P. Bishop Estate, as lessors, and Oahu Sugar Company, Limited, as lessee, dated July 1, 1940, recorded as aforesaid in Book 1599 Page 208 excepting the covenants for the payment of rent reserved thereby and the delivery of all erections and improvements upon the said premises at the expiration of this tenancy, and to keep the Lessor indemnified against all claims, damages, costs and expenses in respect of the non-performance or non-observance thereof;

Provided, However, and this demise is upon this condition, that if the Lessee shall fail to pay the

said rent or any part thereof within thirty days after the same becomes due, whether the same shall or shall not have been legally demanded, or shall become bankrupt, or shall fail faithfully to observe or perform any of the covenants herein contained and on its part to be observed and performed, or shall abandon the said premises, the Lessor may at once re-enter said premises or any part thereof in the name of the whole and at its option terminate this lease without service of notice or legal process and without prejudice to any other remedy or right of action for arrears of rent or for any preceding or other breach of contract; or if at any **time** or times during the said term the Government of the United States of America or of the Territory of Hawaii or any county, municipality or other subdivision of the Territory of Hawaii, or any public service company, shall condemn the said premises, or any part or parts thereof, for any public use or otherwise (except such part or parts be for roads or streets or road or street purposes), then, and in every such case, the estate and interest of the Lessee, in the said premises and in the lease herein made shall at once cease and determine, and the Lessee shall not by reason of such condemnation be entitled to any claim either against the Lessor or others for compensation or indemnity and all compensation payable or to be paid for or on account of the said premises by reason of the condemnation as aforesaid, shall be payable to and be the sole property of the Lessor and the Lessee shall have no interest in



or claim to such compensation or any part or parts thereof whatsoever;

And it is hereby expressly agreed and declared that the acceptance of rent by the Lessor shall not be deemed to be a waiver by it of any breach by the Lessee of any covenant herein contained; that the term "premises" wherever it appears herein includes and shall be deemed or taken to include (except where such meaning would be clearly repugnant to the context) all buildings and improvements now or at any time hereafter built on the said land hereby demised, and that the term "Lessor" in these presents shall include the Lessor, its successors and assigns, and also that the term "Lessee" shall include the Lessee, its successors and permitted assigns.

In Witness Whereof, the said Lessor has caused this instrument to be executed in quintuplicate on the 17th day of January, A. D. 1941, and the said Lessee has likewise caused this instrument to be executed in quintuplicate on the 20th day of January, 1941.

(Seal)

OAHU SUGAR COMPANY,  
LIMITED,

By /s/ H. A. WALKER,  
President.

By /s/ S. M. LOWERY,  
Treasurer.

(Seal)

HONOLULU PLANTATION  
COMPANY,

By /s/ R. A. COOKE,  
Its Attorney-in-Fact.

(Duly Acknowledged.)



Entered of Record this 25th day of February,  
A. D. 1941 at 8:29 o'clock A. M., and compared.  
Mark N. Huckestein, Registrar of Conveyances.

/s/ (Illegible.)

Clerk.

Bureau of Conveyances  
Territory of Hawaii

Honolulu, Hawaii, October 9, 1946

The foregoing is a true photostatic copy of the  
record, recorded in the Bureau of Conveyances of  
the Territory of Hawaii, in liber 1627 on pages  
467-473.

(Seal)      /s/ OLIVER R. AIU,  
Deputy Registrar of Conveyances for the Terri-  
tory of Hawaii.

## HONOLULU PLANTATION EXHIBIT 9-H

(Admitted in Evidence 12-3-46)

Office of the  
Assistant Registrar, Land Court  
Territory of Hawaii

(Bureau of Conveyances)

Honolulu, Hawaii, Mar. 12, 1943

The attached instrument is a true copy of Document Number 66821, received for registration in this office, Mar. 12, 1943, at 2:07 o'clock p.m., and noted on Certificates of Title Numbers 11386, 13831, 13832 and 13688.

Attest:—

(Seal)        /s/ OLIVER R. AIU,  
Assistant Registrar, Land Court, Territory of  
Hawaii.

## LEASE

This Indenture, made this 15th day of December, 1941, by and between Edith Austin, unmarried, of Marion, Massachusetts, Mabel Frazar Austin, of Dedham, Massachusetts, Lindsley Austin, of the City and County of Honolulu, Territory of Hawaii, Dorothy Bradstreet Austin, unmarried, of said Dedham, Massachusetts, and John Frazar Austin, of said Dedham, Massachusetts, individually, and Mabel Frazar Austin, of said Dedham, Massachusetts, Lindsley Austin, of said City and County of Honolulu, and the Boston Safe Deposit

& Trust Company, of Boston, Massachusetts, as Trustees under the Will and of the estate of Walter Austin, deceased, hereinafter called the "Lessors" of the first part, and Honolulu Plantation Company, a California corporation carrying on business in the Territory of Hawaii, whose post-office address is care C. Brewer and Company, Limited, P. O. Box 3470, Honolulu, T. H., hereinafter called the "Lessee" of the second part,

Witnesseth: That the Lessors, in consideration of the rent hereinafter reserved and of the covenants herein contained and on the part of the Lessee to be observed and performed, and the surrender by the Lessee as of December 31, 1940 and the cancellation effective as of December 31, 1940 of the two existing leases dated March 27, 1936 and June 12, 1937, filed in the office of the Assistant Registrar of the Land Court as Documents Nos. 42080 and 42081 and noted on Certificate of Title Nos. 13832, 13688, 13831 and 11386, do hereby demise and lease unto the Lessee:

All those certain parcels of land situate at Waimalu, District of Ewa, City and County of Honolulu, Territory of Hawaii, described as follows:

First: Lot 1, area 2869.73 acres, and Lot 5, area 2.4 acres, as shown on Map 1, and Lots 4-B-1, area 29.135 acres, 4-B-2, area 0.789 acre, and 4-B-4, area 20.46 acres, of the Subdivision of Lot 4-B as shown on Map 3, said maps being filed in the Office of the Assistant Registrar of the Land Court of the Territory of Hawaii with Land Court Application No. 950 (amended); Together with a full,

free and perpetual easement or right of passage way, either on foot or with horses, cattle, carts, wagons and other vehicles however propelled over the following described piece of land:

Beginning at the Southwest corner of this piece of land, being also the initial point of Lot 5 as above described, and running by true azimuths:

1.  $176^{\circ} 09' 40.0$  feet;
2.  $266^{\circ} 09' 20.0$  feet;
3.  $356^{\circ} 09' 40.0$  feet;
4.  $86^{\circ} 09' 20.0$  feet to the point of beginning and containing an area of 800 square feet;

Being all of the lands, except Lot 4-B-3 of said Subdivision of Lot 4-B described in Transfer Certificates of Title Nos. 13,688 issued to Edith Austin, and 13,832 issued to Mabel Frazar Austin and Lindsley Austin, and Boston Safe Deposit and Trust Company, as Trustees under the Will and of the Estate of Walter Austin, Deceased;

Second: R.P. 326, L.C.Aw. 4406-B to Apaa, containing an area of 2.586 acres, being a portion of Land Court Application No. 1027 and being all the lands described in Transfer Certificates of Title Nos. 11386 issued to Edith Austin and 13831 issued to Mabel Frazer Austin and Lindsley Austin, and Boston Safe Deposit and Trust Company, as Trustees under the Will and of the Estate of Walter Austin, Deceased.

Classification of net area demised:

	Cane lands and areas contributory thereto		
	Cane (Acres)	Contributory (Acres)	Total (Acres)
Mauka of Gov't. Rd.	513.29	33.78	547.07
Makai of Gov't. Rd.	27.55	0.38	27.93
	<hr/>	<hr/>	<hr/>
Totals	540.84	34.16	575.00

	Forest Reser- vation Lands (Acres)	Misc. & Waste Lands (Acres)	Total Area (Acres)
Mauka of Gov't. Rd.	1295.00	1027.66	2869.73
Makai of Gov't. Rd.	.....	27.44	55.37
	<hr/>	<hr/>	<hr/>
Totals	1295.00	1055.10	2925.10

Together with all the buildings and improvements thereon, excepting and always reserving out of this demise:

(a) All such pole and wire lines of The Hawaiian Electric Company, Limited, as shall, at the commencement of the term of this lease, have been constructed over and across portions of the lands hereby demised, together with all rights appurtenant thereto;

(b) All lands which the Lessors may from time to time during the term hereof require or deem necessary or desirable as rights of way for pole and wire lines of all kinds to be constructed and maintained by them or their assigns (either in addition to or in substitution for any existing pole and wire line) upon, over or across the lands hereby demised from any point or points and in any direction, and also all reasonable right of entry upon the demised premises for the construction, repair and maintenance of the same in efficient use and condition;



it being understood and agreed that the Lessor's rights in this respect shall be exercised in such manner as to occasion the Lessee the least possible interference with the use by the Lessee of the land demised;

(c) The right unto the Lessors and their tenants and lessees of adjoining and neighboring lands reasonably to use, in common with the Lessee, such roads and trails as may exist upon the lands hereby demised;

To have and to hold the same unto the Lessee from the 1st day of January, 1941, for the term of twenty-five (25) years thence next ensuing, the Lessee yielding and paying therefor yearly and every year during said term unto the Lessors, rent as follows:

A. Minimum Rental:

The minimum rent for the lands hereby demised, based on Fifteen Dollars (\$15.00) per acre per annum for "Cane Lands"; Five Dollars (\$5.00) per acre per annum for "Contributory Lands"; and none for "Miscellaneous and Waste Lands" and "Forest Reservation Lands", shall be Eight Thousand Two Hundred Eighty-three and 40/100 Dollars, (\$8,283.40) per annum, and shall be payable in two equal payments of \$4,141.70 each in advance on the first day of January and the first day of July in each and every year during the continuance of this lease, without any deduction. Said minimum rent shall be decreased for the remainder of the term at the rate of Fifteen Dollars (\$15.00) per acre per annum for each acre of "Cane Lands",

and at the rate of Five Dollars (\$5.00) per acre per annum for each acre of "Contributory Lands", which may be required, taken or condemned for road or other public purposes, and the Lessors shall refund to the Lessee the unearned portion, if any, of the semi-annual installment of the rent which shall have been paid in advance.

**B. Percentage Rental:**

The percentage rent for each calendar year of the term of this lease for the lands hereby demised shall be determined by ascertaining the sum, in cash, of the following:

1. Five per centum (5%) of the gross amount of ninety-six degree (96°) centrifugal raw sugar or its equivalent produced during each calendar year from cane grown on the lands hereby demised, valued at the full per ton New York market price, Hawaiian basis, for ninety-six degrees (96°) centrifugal raw sugar (at present officially reported from time to time by the Hawaiian Sugar Planters' Association, and in case such official reports are discontinued, such other base price as may be mutually agreed upon or as may be determined by means of arbitration as is hereafter provided) averaged for each day, including Sundays and holidays, for the period of each such calendar year, without any deduction, to which shall be added the per ton value of any bounties, compliance payments or refunds received during any calendar year by the Lessee on account of sugar produced from the demised lands during each calendar year.

2. Five per centum (5%) of the gross proceeds,

without any deduction, received by the Lessee from the sale of each form of by-product of sugar or sugar cane produced during the term of this lease by the Lessee from cane grown on the lands hereby demised during each calendar year;

3. Five per centum (5%) of the gross proceeds, without any deduction, received by the Lessee from the sale of products and by-products of any kind, other than of sugar or sugar cane, produced or derived from the lands hereby demised during each calendar year;

The amount, if any, of the percentage rent payable for any calendar year for the lands hereby demised shall be the amount by which the percentage rent for such calendar year exceeds the minimum rent for the lands hereby demised for such calendar year, and such amounts shall be paid by the Lessee to the Lessors within thirty days after the end of such calendar year, or in the event that any bounties, compliance payments or refunds are due to be paid the Lessee on account of sugar produced by the Lessee during such calendar year then the percentage rent with respect to such bounties, compliance payments or refunds, if any, shall become due and payable 30 days after the receipt of such bounty, compliance payment or refund.

#### C. Rental on Account of Sublease:

In the event any portions of the lands classified as 'Cane Lands' shall be sublet by the Lessee, the Lessee shall yield and pay unto the Lessors a further and additional rent amounting to one-half ( $\frac{1}{2}$ ) of the excess of the rent reserved under any

such sublease over a rate of \$15.00 per acre per annum for each acre so sublet; in the event that any portion of the lands classified as 'Contributory Areas' shall be sublet by the Lessee, the Lessee shall yield and pay unto the Lessors a further and additional rent amounting to one-half ( $\frac{1}{2}$ ) of the excess of the rent reserved under any such sublease over a rate of \$5.00 per acre per annum for each acre so sublet; and in the event that any portion of the 'Miscellaneous and Waste Lands' shall be sublet by the Lessee, the Lessee shall yield and pay unto the Lessors a further and additional rent of one-half ( $\frac{1}{2}$ ) of the rent reserved under any such sublease.

Such further and additional rent payable on account of any such sublease shall begin as of the date of commencement of such sublease and shall be paid by the Lessee to the Lessors without any deduction, semi-annually in advance, in equal installments during the term of such sublease, the first of such payments to be made on the first day of January or the first day of July, as the case may be, next succeeding the date of commencement of such sublease, and shall include any rent accrued on account of such sublease at the date of such first payment.

And the lessors hereby covenant with the Lessee that, upon payment by the Lessee of the rent as aforesaid and upon observance and performance of the covenants by the Lessee herein contained and the surrender and cancellation of the leases held by the Lessee as hereinabove mentioned, the Lessee

shall peaceably hold and enjoy the demised premises for the said term without hindrance or interruption by the Lessors or any other person or persons whomsoever, and without limitation upon the general right, hereby granted, to use the lands herein demised for any purpose not herein specifically reserved, restricted or denied, the Lessee shall have the right upon all lands hereby demised, including Forest Reservation Lands, to prospect, dig, bore, drill and tunnel for water, and to build dams, and to construct pumping stations, and to dig, excavate and otherwise construct reservoirs thereon for the storage of water, and to dig, lay, bore and construct ditches, pipe lines, water courses, tunnels and flumes thereon for conducting or leading water to the dams and reservoirs, and from the tunnels, dams, pumping stations and reservoirs to the agricultural lands demised hereby, or to any lands adjacent thereto, and to use any and all water thereby developed for any or all useful purposes in connection with the operation of the Lessee's business, including the irrigation of sugar cane or other crops, the development of power, the watering of livestock, the supplying of domestic water, and the sale thereof to others, provided that in the event water is developed above the eight hundred foot contour line the Lessee shall so use such water as to give preference to the lands hereby demised to the extent such new water development results in the use of additional lands for the growing of sugar cane, and in the event any water developed on the premises hereby demised as hereinbefore provided



is sold for use not related to the demised premises, the Lessee shall pay rent for such water in an amount fixed by mutual agreement, or failing such mutual agreement, then by arbitration as hereinafter provided.

And the Lessee hereby covenants with the Lessors as follows:

That it (the Lessee) will pay the said rent in lawful currency of the United States at the office of the Lessors in Honolulu, in manner aforesaid, without any notice or demand;

That it will also pay, when and as the same become due and payable, all taxes, rates, assessments, impositions, duties, charges and other outgoings of every description to which the demised premises or the Lessors or Lessee in respect thereof are on January 1, 1941, or may during the said term become liable, and whether the same taxes, rates, assessments, impositions, duties, charges and other outgoing are or shall be assessed to or be payable or dischargeable by law by either the Lessors or Lessee, including all assessments or charges for any permanent benefit or improvement of the premises hereby demised or any part thereof, made under any betterment law or otherwise, or any assessments or charges for sewerage or street or sidewalk improvements or municipal or other charges which may be legally imposed upon the said premises, or to which the said premises or any part thereof or the Lessors or Lessee in respect thereof are on January 1, 1941, or may during the said term become liable; provided, however, that

in case any such repair, construction or improvement or any public improvement, whether made by the Lessee hereunder by requirement of law or made by any governmental agency or others under authority of law, shall be made partly for the benefit of lands of the Lessors other than the demised premises then subject to the provisions of this lease, or in case the life of any such repair, construction or improvement made, built or constructed (whether the cost thereof shall be payable under any betterment law or otherwise) may reasonably be expected to exist beyond the term of this lease, the cost thereof or the assessments therefor shall be apportioned between the Lessors and the Lessee in proportion to their respective interests by mutual agreement, or, failing such agreement, then by arbitration as hereinafter provided; and provided further that if any of said assessments or charges may be payable either in a lump sum or in annual installments the Lessee may elect to pay such assessments and charges in annual installments and shall only be liable for the annual installments falling due during the term of this demise, and in case any such repair, construction or improvement shall be for the sole benefit of lands of the Lessors or of the occupants thereof, other than the demised premises then subject to the provisions of this lease, the Lessee shall not be required to pay any portion of the cost thereof;

That it will, at its own expense during the whole of said term, make, build, maintain and repair all fences, sewers, drains and roads which may be re-

quired by law to be made, built, maintained and repaired upon of in connection with or for the use of said premises or any part thereof; and will also build all fences which, in the judgment of the Lessors, may be necessary to protect the reversion in any manner and such also as may be necessary to prevent cattle, horses and other grazing animals from straying from the lands hereby demised onto adjoining lands not controlled by the Lessee;

That it will at its own expense during the whole of said term well and substantially repair, maintain, mend and keep all buildings, reservoirs, dams, ditches, tunnels, flumes, water courses, wells and other improvements and also all boundary monuments now or hereafter built, made or constructed on the lands hereby demised and all necessary reparations and amendments whatsoever in good order and condition, and will also, at its own expense, during the whole of said term, rebuild any and all buildings that may be destroyed by fire within a reasonable time after such destruction: provided, however, that such improvements and buildings as it is mutually agreed by and between the Lessors and the Lessee are of no value whatsoever to the interest of either the Lessors or the Lessee and such buildings and improvements as are damaged by Act of God and the public enemy shall be excepted from the operation of the covenant contained in this paragraph:

That it will permit the Lessors and their agents, at all seasonable times during said term, to enter the demised premises and examine the state of re-

pair and condition thereof, and will repair and make good all defects to the extent herein covenanted of which notice shall have been given by the Lessors or their agents with prompt expedition after the receipt of such notice;

That it will during the whole of said term keep the demised premises in a strictly clean and sanitary condition and observe and perform all the laws, ordinances, rules and regulations relating to health and sanitation for the time being applicable in the premises, and will indemnify the Lessors against all actions, suits, damages and claims by whomsoever brought or made by reason of the non-observance or non-performance of such laws, ordinances, rules and regulations or of this covenant;

That it will plant and complete prior to January 1, 1946, a barrier forest zone of a width to be determined by mutual agreement and varying with the terrain, using trees and methods of planting satisfactory to the Lessors, within and along the makai boundary of the forest reservation and will thereafter care for the trees, and, where necessary to secure a full stand, will replant where trees shall die or be destroyed; and will not cut down, fell or injure or suffer to be cut down, felled or injured, such trees within the aforesaid barrier zone except in making improvement thinnings;

That it will not use the Forest Reservation lands herein demised for any other purpose than as forest reservation without first obtaining the written approval of the Lessors;

That it will at all times during said term admin-



ister the Forest Reservation Lands in cooperation with the forestry authorities of the Territory of Hawaii for the time being, according to the improved methods adapted to a water conserving forest;

That it will at all times during said term foster and encourage the natural reforestation of the Forest Reservation Lands herein demised, and in prosecuting any work of developing any water thereon or diverting water therefrom will take all reasonable and needful precautions to prevent any injury to the natural or planted forest growth;

That it will at all times during said term take all reasonable precautions to keep cattle, horses and other grazing animals out of the Forest Reservation Lands and to prevent forest fires occurring thereon, and in the case such fires shall occur will use all reasonable means at its command or under its control in having such fires speedily extinguished;

That, whenever requested by the Lessors so to do the Lessee will, within six months from the date of such request, at its own charge and expense make and thereafter maintain during the whole of said term such fencing as may be necessary to protect the Forest Reservation Lands hereby demised from the intrusion of cattle, horses and other grazing animals;

That it will from time to time and at least once each year during the said term, make a careful inspection of the Forest Reservation Lands hereby demised, and will during the month of January in



each year (beginning 1942) submit to the Lessors a written report (in duplicate) of the results of such inspection, stating whether or not any animals detrimental to the forest cover or forest lands, or evidence thereof, or any damage to or improper use of said forest cover or forest lands, were observed, and reporting on the general condition of the forest cover and the state of repair and condition of any fences erected for the protection of the Forest Reservation Lands;

That it will, in connection with any water investigation, development, construction, extension and operation on the demised lands hereinabove authorized, furnish to the Lessors from time to time, and not less frequently than once each year during the term of this lease, a full and complete written report (in duplicate) of all work done, together with copies of all reports, surveys, maps, plans and other records secured in connection with such work; and will also keep, in a manner satisfactory to the Lessors, complete records of the quantity of water developed, if any, and will furnish copies of such records to the Lessors not less frequently than once in each year of the term of this lease, and will, in the event that the Lessee shall develop water on lands not herein demised in such manner that the flow of water therefrom becomes mixed with the water developed on the demised lands, install, maintain, and operate adequate water-measuring equipment and will make, keep and furnish the Lessors sufficient guagings and records accurately to determine the quantity of water developed on the lands hereby demised;

That it will also, as soon as is reasonably practicable after the end of each calendar year during the term of this lease, furnish the Lessors a full and complete written report (in duplicate) which will show (1) the acreage of cane harvested during such year on the demised premises segregated as to cane fields, specifying the respective tonnages of cane and raw sugar, and crop cycles and age of cane in months at time of harvest, for each of such fields, together with a list of areas by fields planned to be harvested during the following calendar year; (2) the total tonnage of raw sugar produced during such preceding calendar year by the Lessee from cane grown on all lands controlled by the Lessee; and (3) the quantities of each form of by-product of sugar or sugar-cane produced during such calendar year by the Lessee from cane grown on the demised premises, together with the quantities sold, amounts of gross proceeds received, the year during which such by-products were produced and the quantities remaining unsold at the close of such year;

That it will also, as soon as is reasonably practicable after the end of each calendar year during the term of this lease, furnish the Lessors a full and complete written report (in duplicate) which shall show the quantities of each form of product and by-product, other than sugar and by-products of sugar or sugar cane, produced on the demised premises during such calendar year, and which were sold during such calendar year, together with the amount of gross proceeds received from the sale of each such other product or by-product;

That in the event that any part or parts of the demised premises shall at any time or times during the term of this lease be sublet by the Lessee to others, the Lessee will, as soon as is reasonably practicable after the end of each calendar year during the continuance of any such sublease, furnish the Lessors with a full and complete written report (in duplicate) which shall show the name of the sub-Lessee, the location and area of each parcel of land so sublet, together with the term and rent reserved;

That the Lessee will at all times during the usual office hours, permit the Lessors or their authorized agents and employees to have free access to all of its books of account, contracts and papers relative to the business carried on by it on or in connection with the premises hereby demised in so far as such books of account, contracts and papers shall pertain directly to the determination of the amount of gross proceeds hereinabove mentioned and to examine the same and make copies thereof or any part thereof, and generally to take and use such reasonable means as the Lessors shall deem fit for ascertaining that the accounts furnished by the Lessee are full and accurate and that the Lessee is otherwise faithfully carrying out the covenants herein contained and on its part to be observed and performed; and that it will furnish the Lessors henceforth with copies of the detailed annual reports for each year which are submitted by the Lessee to its stockholders;

That it will not make or suffer any strip or waste

or unlawful, improper or offensive use of the premises demised herein nor, without the consent in writing of the Lessors, mortgage nor assign this lease nor sublet nor part with the possession of the whole or any part of the said demised premises; provided that the restriction as to subleasing shall not apply to lands not being used by the Lessee for the growing of sugar cane and which are not subleased for terms in excess of five years;

That in the use of the demised premises for the planting and cultivating of sugar cane, the Lessee will follow such use in accordance with the standards of good husbandry and approved practices then prevailing in the sugar industry in the Territory of Hawaii, and in the use of the demised premises for any other purpose whatsoever, the Lessee will follow the best of generally approved methods, and in pursuance of these provisions and in the exercise of such use the Lessee shall, by proper construction and use of drainage ditches and otherwise, take all reasonable precautions to prevent or arrest loss of soil by erosion, to the end that the rent payable under this lease shall be as large as might reasonably be expected; and will continue to do so during the continuance of this lease, with all reasonable skill, care, prudence and diligence, so long as it can be done with reasonable profit to the Lessee, it being understood, however, that in no event except as hereinbefore provided, shall this covenant be construed to diminish the minimum rent as hereinbefore specified. In the event any of the lands hereby demised are sublet, pursuant to the provisions of this lease, the sub-



lessee shall be required to covenant that it will not do any planting or cultivating on excessive slopes and will do all furrowing on contours except where permitted by the sublessor to deviate therefrom and subject to the sublessor determining in its discretion what is to be considered an excessive slope, and that in plowing, tilling, planting and cultivating the premises so demised and in harvesting crops therefrom and in the treatment of the said premises after harvesting the sublessee will conform in all respects to the practices of good husbandry;

That it will cultivate and maintain in sugar cane for the said term not less than four hundred eighty-nine (489) acres of the land hereby demised classified as "Cane Lands and Areas Contributory Thereto" below the approximate 650 foot contour line, and that the Lessee shall only be required to keep said area in sugar cane when not prevented therefrom by the Lessors or those holding under them, extreme labor shortage, labor strikes, ouster by paramount authority, Act of God, the public enemy, any government or association of growers restriction or curtailment program to which the Lessee may be a party, and when not in conflict with any other provision of this lease.

That, in the event the Lessee discontinues or temporarily curtails cane cultivation on land controlled by it, due to Governmental restrictions or in order that the Lessee may receive benefits from any general crop reduction program initiated by the Government or by an association of growers,



it will not discontinue nor temporarily curtail the cultivation of cane on the demised premises in a greater ratio to the required total curtailment than the ratio of cane area cultivated on the demised premises bears to the total cane area cultivated by the Lessee;

That, in the event the Lessors shall bring and sustain any action against the Lessee for any breach of covenant or condition herein contained or for the recovery or possession of the demised premises, the Lessee will pay to the Lessors all costs and expenses incurred by them in such action, including a reasonable attorney's fee;

That at the expiration of said term or sooner determination of this lease, it will peaceably surrender and deliver up to the Lessors possession of the lands hereby demised, together with all improvements thereon, in substantially good order and condition, reasonable wear and tear and damage by the elements, public enemy, or other unavoidable casualty or cause excepted; Provided, However, that nothing in this lease contained shall be deemed to prevent the Lessee from time to time from moving buildings and other improvements from one place to another on the demised premises, or from changing any such that has become old or worn or unsuitable by reason of obsolescence or otherwise for other that is new or suitable, or from discarding and disposing of such as is no longer required, or from making other changes on the demised premises by addition, subtraction or modification as it may deem advisable in the exer-

cise of good business judgment in the operation of the plantation or the business conducted on the demised premises; Provided that in case of sooner determination of this lease in respect to lands hereby demised classified as "Miscellaneous and Waste Lands" occasioned by the Lessors withdrawing the same as hereinafter provided, the Lessors shall reimburse the Lessee for all erections and improvements upon or belonging to the same if made by the Lessee, to the extent of the Lessee's interest therein as measured by the unexpired portion of said term, and in case the Lessors and the Lessee are unable to agree upon the amount, then such amount to be paid by the Lessors to the Lessee shall be determined by arbitration as hereinafter provided.

It Is Mutually Understood and Agreed by the parties hereto as follows:

(a) That in the event the demised premises or any part thereof shall be required, taken or condemned for any public use, then, in every such case, the estate and interest of the Lessee in the part of the premises taken shall at once cease and determine, and the Lessee shall not by reason of such taking be entitled to any claim either against the Lessors or others for compensation or indemnity for the taking of any land or water, or of any improvements which shall have been made prior to January 1, 1936, and all compensation payable or to be paid by reason thereof shall be payable to and be the sole property of the Lessors and the Lessee shall have no interest in or claim to such compensation or any part thereof whatso-

ever; Provided, However, and it is hereby agreed that such compensation as shall represent the value of any growing crops and cane stools shall be payable to and be the sole property of the Lessee; and such compensation as shall represent the value of any improvements or buildings made or constructed after January 1, 1936, shall be divided between the Lessors and the Lessee as their interests shall appear, dependent upon the then unexpired term of this lease; and it is further agreed that if such taking shall so affect the remaining premises held by the Lessee under this lease, or so affect the operation of the Lessee's remaining lands and tenancies, or the business being conducted thereon as to cause substantial damage to the Lessee, then and in that event the Lessee shall have the right to present and pursue its claim for damages and be compensated therefor so long as such action or the payment of such damage shall not affect nor diminish the compensation payable to the Lessors as stipulated hereinabove;

(b) That the term "by-product of sugar or sugar cane" as used herein shall mean any product which remains over in the cultivation of sugar cane or the manufacture of sugar, and which possesses an actual or potential value of its own in the form in which it remains over; and the term "product other than sugar cane or sugar" as used herein shall mean any product which is produced on the demised premises other than water and sugar cane and which possesses an actual or potential value of its own; and that the Lessee shall not sell any product derived from the processing in whole or

in part of a by-product of sugar or sugar cane, nor any product or by-product derived from the processing in whole or in part of a product other than sugar cane or sugar, without first obtaining from the Lessors written permission so to do, and agreeing with the Lessors upon the method by which the percentage rental with respect thereto shall be calculated;

(c) That the premises hereby demised above the approximate 650 foot contour line may be withdrawn from the operation of this lease after December 31, 1945 at any time during the remainder of said term by either the Lessee or the Lessors upon complying with the following conditions;

(1) That said premises or any portion thereof not then being used by the Lessee for the growing of sugar cane or the production, development, storage or conveyance of water, or any use then requiring or which may thereafter require the payment of percentage rental or which are not then being subleased by the Lessee as **hereinbefore provided**, may be withdrawn by the Lessors upon notifying in writing the Lessee or its agent, C. Brewer and Company, Limited, at its office in Honolulu, T. H. of such intention and the specific areas to be withdrawn not less than twelve months prior to the date such withdrawal is to become effective; provided that the Lessee may prevent such withdrawal by notifying, in writing, the Lessors or their agents in Honolulu, T. H., at least six months before the expiration of said twelve months of its objection to such withdrawal and agreeing with the Lessors to pay such additional rent for the



said premises as may be agreed upon or as may be determined by arbitration as hereinafter provided;

(2) That the Lessors will bear all of the expenses connected with such withdrawal, including the Lessee's cost of re-adjustment, re-location and re-installation of any plantation utilities as may be thereby affected, including, but without limitation, roads, railroads, ditches, flumes, siphons and fences; that they will assume and bear all costs and expenses of road construction, maintenance and upkeep occasioned or required by such withdrawal, and where such withdrawal is the proximate cause of substantially increasing the cost of maintenance and upkeep of plantation roads or the construction of new roads to be used jointly by the plantation and the Lessors or persons holding under them then to the extent of such additional costs and expenses the Lessors shall be solely liable and shall pay or reimburse the Lessee therefor unless the same shall be deemed by the Lessors to be unreasonable, in which event the amount payable by the Lessors shall be determined by arbitration as hereinafter provided; and that they will release the Lessee from all taxes and all assessments or charges imposed under authority of law and required under the terms of this lease to be paid by the Lessee to the extent that said taxes, assessments and charges relate to the areas withdrawn and to the extent to which such withdrawn lands create or increase the said assessments or charges but not taxes for the area remaining after such withdrawal;



(3) In case the major portion of the arable lands of said premises is withdrawn by the Lessors then any portion or all of the remaining premises may be withdrawn by the Lessee upon notifying in writing the Lessors or their agents in Honolulu, T. H. of such intention and the area to be withdrawn at least twelve months prior to the date such withdrawal is to become effective;

(d) That all matters of disagreement that may arise under this lease, which cannot be adjusted by the parties hereto to their mutual satisfaction, including any matter herein left to future mutual agreement, shall be settled by arbitration and at the desire of either party shall be submitted to and determined by three disinterested arbitrators, one to be appointed by each of the parties hereto, and either party may give to the other written notice of a desire to have an arbitration of the matter or matters in dispute and name therein one of the arbitrators, whereupon the other party shall within ten (10) days after the receipt of such notice, name another arbitrator, and, in case of failure so to do, the party who has named an arbitrator shall have the right to apply to a Circuit Judge of the Circuit Court of the First Judicial Circuit of the Territory of Hawaii, requesting him to appoint an arbitrator to represent the party so failing to appoint an arbitrator, and the two arbitrators thus appointed (in either manner), shall select and appoint a third arbitrator, and in the event that the two arbitrators so appointed shall, within ten (10) days after the naming of the second arbitrator fail to appoint the third arbitrator,

either party shall have the right to apply to such judge to appoint such third arbitrator, and the three arbitrators so appointed shall thereupon proceed to determine the matter or matters in question, and the decision of any two of them (including the disposition of the costs of the arbitration) shall be final, conclusive and binding upon both parties, and judgment may be entered upon such award by the Circuit Court of the First Circuit unless the same shall be vacated, modified or corrected as provided in Chapter 116, Revised Laws of Hawaii 1935, or as the same may be amended or re-enacted from time to time, the provisions of which said statute shall apply hereto as fully as though incorporated herein;

Provided, However, and this lease is upon this condition, that if the Lessee shall fail to pay said rent or any part thereof within thirty (30) days after the same shall become due, whether the same shall or shall not have been legally demanded, or fail in any other respect faithfully to observe or **perform** any condition or covenant of this lease contained and on its part to be observed or performed, and any such default shall continue for thirty (30) days, or if the Lessee shall become bankrupt or insolvent or shall make an assignment for the benefit of its creditors, or if the Lessee should file any debtor proceedings, or take, or have taken against it any proceedings of any kind or character whatsoever under any provision of the Federal Bankruptcy Act seeking any readjustment, arrangement, postponement, composition or reduction of Lessee's debts, liabilities or obligations, or

abandon said premises or suffer this lease or any estate or interest hereunder to be taken under any writ of execution, then and in any such event the Lessors may at once enter into and upon the demised premises or any part thereof in the name of the whole and at their option terminate this lease by mailing a written notice to the Lessee, addressed to the Lessee at the last known address of the Lessee, and filing a copy of such notice in the Office of the Assistant Registrar of the Land Court of the Territory of Hawaii, or at the option of the Lessors, by filing a petition for an order cancelling said lease, which order may be issued by the Land Court on ex parte petition without summoning or notifying the Lessee, and thereupon take possession of the said premises and all improvements thereon, and thereby become wholly vested with all right, title and interest of the Lessee therein and may expel and remove from the said premises the Lessee or those claiming under it, and their effects, all without service of notice or resort to any legal process and without being deemed guilty of any trespass or becoming liable for any loss or damage which may be occasioned thereby and without prejudice to any other remedy or right of action which the Lessors may have for arrears of rent or for other or preceding breach of covenant of this lease on the part of the Lessee.

And It Is Hereby Expressly Agreed and Declared that the acceptance of rent by the Lessors shall not be deemed to be a waiver by them of any breach by the Lessee of any covenant herein contained, or of the Lessors' right to terminate this

lease for breach of covenant; that the term "premises" wherever it appears herein includes and shall be deemed or taken to include (except where such meaning would be clearly repugnant to the context) all buildings and improvements on January 1, 1941, or at any time thereafter built on the lands hereby demised and all water arising thereon or appurtenant thereto, and that the term "Lessors" in these presents shall include the Lessors, their executors, administrators, heirs, successors in trust and assigns, and also that the term "Lessee" shall include the Lessee, its successors and permitted assigns.

In Witness Whereof the parties hereto have caused this instrument and four other instruments of the same date and tenor to be duly executed the day and year first above written.

/s/ EDITH AUSTIN,

/s/ MABEL FRAZAR AUSTIN,

/s/ LINDSLEY AUSTIN,

/s/ DOROTHY BRADSTREET  
AUSTIN,

/s/ JOHN FRAZAR AUSTIN,

/s/ MABEL FRAZAR AUSTIN,

/s/ LINDSLEY AUSTIN,

and

BOSTON SAFE DEPOSIT &  
TRUST COMPANY,

By /s/ JOHN H. EATON, JR.,

Vice-President & Trust Officer,

Trustees under the Will and of the Estate of Walter Austin, Deceased, but not individually.

HONOLULU PLANTATION  
COMPANY,

By /s/ JOHN D. McKEE,  
President.

By /s/ C. F. JACOBSON,  
Secretary.

(Duly Acknowledged.)

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HONOLULU PLANTATION EXHIBIT 9-G

(Admitted in Evidence 12-3-46)

## AMENDMENT OF LEASE

This Indenture made this 2nd day of December, 1943, by and between George M. Collins, John K. Clarke, Frank E. Midkiff, Edwin P. Murray and Joseph B. Poindexter, all citizens of the United States of America, of the City and County of Honolulu, Territory of Hawaii, Trustees under the Will and of the Estate of Bernice P. Bishop, deceased, parties of the first part, and Honolulu Plantation Company, a California corporation carrying on business in the Territory of Hawaii, whose business and post-office address in said Territory is c/o C. Brewer and Company, Limited, 827 Fort Street, Honolulu aforesaid, and a majority of whose officers and directors are likewise citizens of the United States of America, party of the second part,



## Witnesseth That:

Whereas the then Trustees under said Will and of said Estate, as Lessors, and the said party of the second part, as Lessee, did on the 21st day of March, 1936, enter into an indenture of lease, being Bishop Estate Lease No. 5500, recorded in Liber 1415, pages 1-46, Hawaiian Registry of Conveyances, wherein the Lessors therein named demised to the said party of the second part twelve parcels of land comprising certain portions of the Ahupuaas of Halawa and Waiawa, of the land of Aiea, and of the Ilis of Kaonchi, Kumuulu, Waimano and Poupouwela, situate in the District of Ewa, Honolulu aforesaid, containing an aggregate net area of 7485.30 acres, more or less, all as described in said lease, for the term of 30 years from January 1, 1936; and

Whereas said Lease 5500 was cancelled as of June 30, 1940, by mutual agreement dated the 28th day of January, 1941, recorded in Liber 1627, pages 308-310, said Registry; and

Whereas the then Trustees under said Will and of said Estate, as Lessors, and the said party of the second part, as Lessee, did on the said 28th day of January, 1941, enter into a new indenture of lease, being Bishop Estate Lease No. 6600, recorded in Liber 1627, pages 326-370, said Registry, and also filed with the Assistant Registrar of the Land Court, Territory of Hawaii, as Document No. 56933 and so noted on Transfer Certificate of Title No. 28655 issued to the parties of

the first part, wherein the Lessors therein named demised to the said party of the second part fifteen parcels of land comprising certain portions of the Ahupuaas of Halawa and Waiawa, of the land of Aiea, and of the Ilis of Kaonohi, Kumuulu, Waimano and Poupouwela, situate in the District of Ewa, Honolulu aforesaid, containing an aggregate net area of 7274.954 acres, more or less, all as described in said lease, for the term of 25 years and 6 months from July 1, 1940; and

Whereas said new Lease 6600 has heretofore been modified by partial surrender dated November 6, 1941, recorded in Liber 1787, pages 328-329, said Registry, by supplementary agreement dated Mar. 8, 1943, unrecorded, and also as a result of certain proceedings in eminent domain brought by the United States of America affecting portions of the premises demised by said Lease 6600; and

Whereas the parties hereto have agreed to a modification of the terms and conditions of said Lease 6600 as hereinafter set forth and to the confirmation thereof as so modified;

Now, Therefore, This Agreement Witnesseth: That the parties hereto agree to change the date "July 1, 1940" appearing in line 19, and extending into line 20, and in line 28, both on page 29 of said Lease 6600, and also in lines 20 and 29 on page 40 of said Lease 6600, to read "January 1, 1936."

In Witness Whereof the parties of the first part as such Trustees as aforesaid have set their hands, and the party of the second part has caused its name and corporate seal to be set by its attorney-

in-fact, hereunto and to two other instruments of the same date and tenor, the day and year first before written.

/s/ EDWIN P. MURRAY,

/s/ GEO. M. COLLINS,

/s/ J. K. CLARKE,

Trustees under the Will and of the Estate of  
Bernice P. Bishop, deceased.

HONOLULU PLANTATION  
COMPANY,

By /s/ P. E. SPALDING,

Its Attorney-in-Fact.

(Corporate Seal.)

Above named Trustees acknowledged Dec. 7, 1943, before Wm. D. McKillop. Notary, First Circuit, T. H.

P. E. Spalding acknowledged Dec. 2, 1943, before Chas. H. Merriam, Notary, First Circuit, T. H.

LEASE No. 6600

This Indenture, made as of the first day of July, 1940, by and between George M. Collins, John K. Clarke, Frank E. Midkiff and Edwin P. Murray, all of the City and County of Honolulu, Territory of Hawaii, Trustees under the Will and of the Estate of Bernice P. Bishop, deceased, hereinafter called the "Lessors", of the first part, and Honolulu Plantation Company, a California corporation

carrying on business in the Territory of Hawaii, whose business and post-office address in said Territory is c/o C. Brewer and Company, Limited, 827 Fort Street, Honolulu aforesaid, hereinafter called the "Lessee", of the second part,

Witnesseth: That the Lessors, in consideration of the rent hereinafter reserved, and of the covenants herein contained and on the part of the Lessee to be observed and performed, and the surrender by the Lessee and the cancellation as of June 30, 1940, of Bishop Estate Lease No. 5500, recorded in the Hawaiian Registry of Conveyances in Book 1415, page 1, held by the Lessee, do hereby demise and lease unto the Lessee:

All those fifteen (15) certain pieces or parcels of land situate in the District of Ewa, Honolulu aforesaid, comprising portions of the Ahupuaa of Halawa, of the land of Aiea (Grants 8945 and 10197), of the Ili of Kaonohi (Kalauao), of the Ili of Kumuulu (Waiau), of the Ili of Waimano, of the Ili of Poupouwela (Manana-iki) and of the Ahupuaa of Waiawa, containing an aggregate net area of seven thousand two hundred seventy-four and nine hundred fifty-four thousandths (724.954) acres, more or less, as delineated on Bishop Estate Maps Nos. 627, 963, 2353 to 2361 both inclusive, 2387, 2565, 2566, 2567, 2582 and 2583 on file in the office of the Lessors, and classified as follows:

## CLASSIFICATION OF NET AREA DEMISED

Land	Cane (acres)	Cane Lands		Potential Cane Lands (acres)	Forest		Miscellaneous Lands (acres)	Total Area (acres)
		Contributory (acres)	Total (acres)		Reservation Lands (acres)			
Halawa	537.237	51.680	588.917	28.100	2325.00		166.320	3106.337
Aiea	10.538	2.040	12.578	.....	.....		.....	12.578
Kaonohi	413.962	49.020	462.982	0.450	865.00		177.938	1506.370
Kumuulu	380.194	44.500	424.694	25.030	1170.00		587.730	2207.454
Waiau & Waimalu	2.700	0.160	2.860	.....	.....		0.075	2.935
Waiau	.....	.....	.....	.....	.....		2.130	2.130
Waimano	1.647	0.420	2.067	.....	.....		.....	2.067
Poupouwela & Waiawa	375.513	22.820	398.333	25.450	.....		9.30	433.083
Sub-Totals	1721.791	170.640						
		Totals	1892.431	79.030	4360.00		943.493	7274.954



the same being more particularly bounded and described as follows:

PARCEL "A" (Halawa):

Comprising a portion of the Ahupuaa of Halawa, being L. C. Aw. 7712 and L. C. Aw. 8516B, R. P. 6717 to M. Kekuanaoa and Kamaikui; all of L. C. Aw. 9332B, R. P. 771, Apanas 1 and 2 to Kealohanui; and all of L. C. Aw. 2156, R. P. 766, Apana 3 to Oponui, and being described as follows:

Beginning at a point at the Northwest corner of this parcel of land, adjoining the land of Aiea and on the Easterly side of Kamehameha Highway, the coordinates of said point referred to Government Survey Triangulation Station "Salt Lake" being 3770.19 feet North and 8348.42 feet West, and running thence by azimuths measured clockwise from true South:

1.  $237^{\circ} 48' 20''$ —1341.58 feet along the land of Aiea to a concrete monument marked "14";
2.  $237^{\circ} 41' 00''$ —55.10 feet along same across Moanalua Road to a concrete monument marked "13";
3.  $305^{\circ} 27' 00''$ —600.00 feet along the Northerly side of Moanalua Road to a pipe;
4.  $215^{\circ} 27' 00''$ —625.36 feet along Aiea School Lot to a pipe;
5.  $125^{\circ} 27' 00''$ —342.65 feet along same to a pipe;
6.  $237^{\circ} 47' 30''$ —612.30 feet along land of Aiea to a monument called "Halawa Rock";
7.  $240^{\circ} 59' 00''$ —5050.80 feet along same to a pipe in concrete called "Pohakuumeume";

8.  $234^{\circ} 38' 00''$ —2530.60 feet along same to a pipe at the 650-foot contour; Thence along the center of a road along the approximate 650-foot contour for the next ten courses, the direct azimuths and distances being;
9.  $332^{\circ} 00' 00''$ —270.00 feet;
10.  $283^{\circ} 00' 00''$ —270.00 feet;
11.  $267^{\circ} 00' 00''$ —240.00 feet;
12.  $336^{\circ} 00' 00''$ —240.00 feet;
13.  $285^{\circ} 00' 00''$ —350.00 feet;
14.  $245^{\circ} 00' 00''$ —400.00 feet;
15.  $24^{\circ} 00' 00''$ —270.00 feet;
16.  $321^{\circ} 00' 00''$ —140.00 feet;
17.  $23^{\circ} 00' 00''$ —300.00 feet;
18.  $328^{\circ} 00' 00''$ —170.00 feet to the edge of pali; Thence along pali along the 650-foot contour for the next two courses, the direct azimuths and distances being:
19.  $235^{\circ} 00' 00''$ —1670.00 feet;
20.  $205^{\circ} 10' 00''$ —487.20 feet to the forest reserve;
21.  $300^{\circ} 10' 30''$ —1705.40 feet along forest reserve to a “†” on large rock;
22.  $60^{\circ} 47' 00''$ —11639.70 feet along Land Court Application 966 to the center of Halawa Stream; Thence down the middle of Halawa Stream along Land Court Application 966 for the next seventeen courses, the direct azimuths and distances being:
23.  $120^{\circ} 30' 00''$ —65.00 feet;
24.  $101^{\circ} 08' 00''$ —265.00 feet;
25.  $78^{\circ} 30' 00''$ —223.00 feet;
26.  $28^{\circ} 50' 00''$ —280.00 feet;

27.  $65^{\circ} 40' 00''$ —100.00 feet;
28.  $84^{\circ} 25' 00''$ —800.00 feet;
29.  $39^{\circ} 35' 00''$ —210.00 feet;
30.  $54^{\circ} 00' 00''$ —230.00 feet;
31.  $359^{\circ} 35' 00''$ —130.00 feet;
32.  $34^{\circ} 30' 00''$ —332.00 feet;
33.  $357^{\circ} 25' 00''$ —200.00 feet;
34.  $345^{\circ} 10' 00''$ —168.00 feet;
35.  $76^{\circ} 40' 00''$ —340.00 feet;
36.  $21^{\circ} 55' 00''$ —350.00 feet;
37.  $43^{\circ} 00' 00''$ —300.00 feet;
38.  $39^{\circ} 42' 00''$ —420.40 feet;
39.  $13^{\circ} 17' 00''$ —26.00 feet; Thence continuing down the middle of Halawa Stream along the remainder of the land of Halawa for the next twelve courses, the direct azimuths and distances being:
  40.  $62^{\circ} 13' 53''$ —151.99 feet;
  41.  $73^{\circ} 45' 00''$ —300.00 feet;
  42.  $58^{\circ} 20' 00''$ —239.00 feet;
  43.  $14^{\circ} 38' 00''$ —100.00 feet;
  44.  $65^{\circ} 03' 00''$ —100.00 feet;
  45.  $82^{\circ} 56' 00''$ —181.40 feet;
  46.  $93^{\circ} 07' 00''$ —180.00 feet;
  47.  $115^{\circ} 00' 00''$ —151.90 feet;
  48.  $147^{\circ} 20' 00''$ —100.40 feet;
  49.  $177^{\circ} 47' 00''$ —201.80 feet;
  50.  $153^{\circ} 26' 00''$ —151.00 feet;
  51.  $123^{\circ} 50' 00''$ —323.63 feet to a point on the Southeast side of Kamehameha Highway;
  52.  $203^{\circ} 32' 00''$ —116.87 feet along the Southeast side of Kamehameha Highway;

53.  $293^{\circ} 32' 00''$ —5.00 feet along same;
54.  $203^{\circ} 32' 00''$ —710.19 feet along same; Thence on a curve to the right with a radius of 5689.65 feet along same, the chord azimuth and distance being:
55.  $204^{\circ} 25' 57''$ —178.57 feet;
56.  $115^{\circ} 19' 54''$ —5.00 feet along Kamehameha Highway; Thence on a curve to the right with a radius of 5694.65 feet along the Southeast side of Kamehameha Highway, the chord azimuth and distance being:
57.  $207^{\circ} 13' 42''$ —376.95 feet;
58.  $209^{\circ} 07' 30''$ —1797.11 feet along the Southeast side of Kamehameha Highway; Thence on a curve to the left with a radius of 1115.48 feet along same, the chord azimuth and distance being:
59.  $203^{\circ} 12' 54.5''$ —281.64 feet;
60.  $284^{\circ} 37' 12''$ —5.00 feet along Kamehameha Highway; Thence on a curve to the left with a radius of 1120.48 feet along same to the point of beginning, the chord azimuth and distance being:
61.  $193^{\circ} 48' 36.5''$ —31.67 feet and containing a Gross Area of 760.964 acres, as delineated on Bishop Estate Maps 2357, 2358, 2359, 2360 and 2361;

Excepting and Reserving, however, the following:

## EXCEPTION "A":

All kuleanas within the bounds of this parcel owned by other than the Lessors, being listed as follows:

L. C. Aw.	R.P.	Apana	Awardee	Area, Acres	
2139	761	—	Kinilau	1.045	
1996	769	—	Naea	2.000	
9332	765	1 & 2	Kaheana	0.540	
2047	759	1 & 2	Kekio no Kanuai	1.000	
2096	758	1 & 2	Kenui	0.938	
2042	762	1 & 2	Kauohilo	0.790	
2043	764	2	Kawaha	0.290	
2044	768	1, 2 & 3	Kaupali	1.014	
2048	760	1 & 2	Kauhalu	0.870	
2016	455	1 & 2	Makakane	0.326	
2057	456	1 & 2	Keawe	0.463	
2131	457	1 & 2	Kanihoalii no		
			Kaukiwaa	1.630	
1983	763	—	Hapule	3.659	14.565

## EXCEPTION "B":

All other lands not owned by the Lessors and listed as follows:

Land Court Application 36, 1.420.

Portions L. C. Aw. 7712 & 8516B, R. P. 6717 to M. Kekuanaoa and Kamaikui.

By Deed dated January 10, 1928 (Hon. Plant. Co.)....	1.870	
By Deed dated April 16, 1937 (Moanalua Road).....	3.756	7.046
		<hr/>
Total.....	21.611	
Gross Area .....	760.964	
Less Exceptions "A" and "B" .....	21.611	
		<hr/>
Net Area Demised .....	739.353	Acres



## PARCEL "A-1" (Halawa):

Comprising a portion of the Ahupuaa of Halawa, being L. C. Aw. 7712 and L. C. Aw. 8516B, R. P. 6717 to M. Kekuanaoa and Kamaikui, and being described as follows:

Beginning at a pipe in concrete at the East corner of this parcel, the same being the end of Course 18 of Land Court Application 966, and running thence by azimuths measured clockwise from true South:

1.  $57^{\circ} 42' 00''$ —1884.78 feet along Land Court Application 966;
2.  $218^{\circ} 25' 00''$ —1859.78 feet along remainder of the land of Halawa;
3.  $215^{\circ} 01' 59''$ —91.96 feet along same;
4.  $323^{\circ} 49' 00''$ —656.60 feet along Land Court Application 966 to the point of beginning and containing an area of 14.054 acres, as delineated on Bishop Estate Map 2357.

## PARCEL "A-2" (Halawa):

Comprising a portion of the Ahupuaa of Halawa, being L. C. Aw. 7712 and L. C. Aw. 8516B, R. P. 6717 to M. Kekuanaoa and Kamaikui, and being described as follows:

Beginning at a point at the Northeast corner of this parcel of land, adjoining the land of Aiea and on the Westerly side of Kamehameha Highway, the coordinates of said point referred to Government Survey Triangulation Station "Salt Lake" being 3711.26 feet North and 8442.03 feet West, and running thence by azimuths measured clockwise from true South:

On a curve to the right with a radius of 1045.48 feet along the Westerly side of Kamehameha Highway, the chord azimuth and distance being:

1.  $23^{\circ} 12' 54.5''$ —215.29 feet;
2.  $29^{\circ} 07' 30''$ —1797.11 feet along the Westerly side of Kamehameha Highway; Thence on a curve to the left with a radius of 5764.65 feet, along same, the chord azimuth and distance being:
3.  $27^{\circ} 13' 42''$ —381.59 feet;
4.  $115^{\circ} 19' 54''$ —5.00 feet along Kamehameha Highway; Thence on a curve to the left with a radius of 5769.65 feet along the Westerly side of Kamehameha Highway, the chord azimuth and distance being:
5.  $24^{\circ} 25' 57''$ —181.08 feet;
6.  $23^{\circ} 32' 00''$ —710.19 feet along the Westerly side of Kamehameha Highway;
7.  $293^{\circ} 32' 00''$ —5.00 feet along same;
8.  $23^{\circ} 32' 00''$ —107.77 feet along same;
9.  $118^{\circ} 01' 00''$ —202.65 feet along the middle of the Halawa Stream;
10.  $118^{\circ} 36' 13''$ —38.54 feet along same;
11.  $193^{\circ} 38' 00''$ —100.00 feet more or less; Thence along high water mark for the next four courses, the direct azimuths and distances being:
12.  $120^{\circ} 30' 00''$ —233.00 feet more or less;
13.  $168^{\circ} 10' 00''$ —185.00 feet more or less;
14.  $211^{\circ} 45' 00''$ —1247.00 feet more or less;
15.  $200^{\circ} 55' 00''$ —1150.00 feet more or less;

16.  $251^{\circ} 10' 00''$ —687.27 feet along land of Aiea to a U. S. monument;
17.  $237^{\circ} 48' 20''$ —299.81 feet along same to the point of beginning and containing a Gross Area of 33.679 acres, and a Net Area of 29.930 acres after deducting the Oahu Railway and Land Company's right of way, as delineated on Bishop Estate Map 2358.

## PARCEL "B" (Aiea):

Comprising portions of Land Patents (Grants) 8945 and 10197 to the B. P. Bishop Estate, and being described as follows:

Beginning at a monument marked U. S. No. 19 at the North corner of this parcel of land, the same being the East corner of Grant 4270, the coordinates of said point of beginning referred to Government Survey Triangulation Station "Salt Lake" being 6037.83 feet North and 5597.80 feet West, and running thence by azimuths measured clockwise from true South:

1.  $294^{\circ} 48' 00''$ —530.11 feet along U. S. Navy Reservation;
2.  $81^{\circ} 49' 30''$ —143.87 feet;
3.  $75^{\circ} 48' 00''$ —148.73 feet;
4.  $51^{\circ} 11' 00''$ —73.06 feet;
5.  $22^{\circ} 41' 00''$ —143.56 feet;
6.  $60^{\circ} 59' 00''$ —675.74 feet;
7.  $57^{\circ} 47' 30''$ —755.66 feet;
8.  $150^{\circ} 24' 00''$ —125.49 feet; Thence on a curve to the left with a radius of 657.3 feet, the chord azimuth and distance being:
9.  $238^{\circ} 17' 32''$ —218.87 feet; Thence on a curve

to the left with a radius of 519.1 feet, the chord azimuth and distance being:

10. 201° 26' 01"—393.94 feet;
11. 235° 45' 00"—1064.20 feet along Grant 4270 to the point of beginning and containing an area of 12.578 acres, as delineated on Bishop Estate Map 2360.

PARCEL "C" (Ili of Kaonohi):

Comprising a portion of the Ili of Kaonohi being L. C. Aw. 5524, R. P. 1963, Apana 6 to L. Konia; and portions of the following titles, i.e.:

L. C. Aw. 2494, L. P. 8145, Apanas 1 & 2 to Julia Kekoa,

L. C. Aw. 6156B, R. P. 745, Apana 1 to Mahoe,  
L. C. Aw. 5583, R. P. 448 to Kaawaole, and all of the following titles, i. e.:

L. C. Aw. 2494, L. P. 8145, Apanas 3 and 4 to Julia Kekoa,

L. C. Aw. 6156B, R. P. 745, Apana 2 to Mahoe,

L. C. Aw. 9322, R. P. 455 to Hawea,

L. C. Aw. 5844, R. P. 3082 to Puleonui,

L. C. Aw. 5651, L. P. 8100 to Kaumiumi,

L. C. Aw. 5817, R. P. 752, Apanas 1 and 2 to Kamoku,

L. C. Aw. 9288, R. P. 744, Apanas 1 and 2 to Kaina, and an undivided  $\frac{5}{8}$  interest in L. C. Aw. 5906 and 9307, R. P. 754. Apanas 1 and 2 to Pupue, and being described as follows:

Beginning at a pipe on the Westerly side of this parcel of land, adjoining the Ili of Waieli, and on the Northeasterly side of the Oahu Railway and Land Company's railroad right of way, the co-

ordinates of said point of beginning referred to Government Survey Triangulation Station "Salt Lake" being 7026.9 feet North and 13,333.5 feet West, and running thence by azimuths measured clockwise from true South:

1.  $222^{\circ} 57'$ —256.7 feet along the Ili of Waieli to a "†" on set stone;
2.  $200^{\circ} 37'$ —104.3 feet along same to a pipe;
3.  $245^{\circ} 35'$ —151.3 feet along L. C. Aw. 9400, R. P. 449, Apana 1 to Hilo no Kacio to a pipe;
4.  $155^{\circ} 20'$ —132.0 feet along same to a pipe;
5.  $65^{\circ} 35'$ —18.6 feet along same to a pipe;
6.  $200^{\circ} 37'$ —476.6 feet along the Ili of Waieli to a "†" on set stone;
7.  $210^{\circ} 10'$ —1452.0 feet along same to a "†" on set stone;
8.  $229^{\circ} 42'$ —2113.3 feet along same to a "†" on set stone;
9.  $225^{\circ} 28'$ —734.1 feet along same to a "†" on set stone; Thence along pali, along the Ili of Waieli for the next seventeen courses, the direct azimuths and distances being:
10.  $267^{\circ} 06'$ —514.9 feet;
11.  $237^{\circ} 00'$ —496.0 feet;
12.  $235^{\circ} 40'$ —276.5 feet;
13.  $239^{\circ} 51'$ —397.0 feet;
14.  $242^{\circ} 42'$ —731.2 feet;
15.  $267^{\circ} 37'$ —150.0 feet;
16.  $240^{\circ} 25'$ —250.3 feet;
17.  $263^{\circ} 41'$ —200.0 feet;
18.  $219^{\circ} 38'$ —197.9 feet;
19.  $252^{\circ} 25'$ —283.8 feet to a  $1\frac{1}{4}$  inch pipe;



20.  $260^{\circ} 36'$ —253.1 feet;
21.  $261^{\circ} 48'$ —343.1 feet;
22.  $223^{\circ} 52'$ —295.4 feet;
23.  $242^{\circ} 04'$ —257.8 feet;
24.  $253^{\circ} 54'$ —203.8 feet;
25.  $268^{\circ} 01'$ —245.3 feet;
26.  $279^{\circ} 30'$ —320.2 feet; Thence along the approximate 650-foot contour and along the center of road for the next five courses, by the following azimuths and distances;
27.  $351^{\circ} 00'$ —245.0 feet;
28.  $273^{\circ} 05'$ —181.0 feet;
29.  $292^{\circ} 20'$ —900.0 feet;
30.  $266^{\circ} 15'$ —401.5 feet;
31.  $229^{\circ} 20'$ —575.0 feet to edge of pali; Thence along the approximate 650-foot contour for the next five courses, by the following azimuths and distances;
32.  $244^{\circ} 30'$ —391.5 feet;
33.  $298^{\circ} 15'$ —236.0 feet;
34.  $257^{\circ} 15'$ —1110.0 feet;
35.  $264^{\circ} 30'$ —701.0 feet;
36.  $243^{\circ} 30'$ —740.5 feet to the forest reserve;
37.  $318^{\circ} 45' 25''$ —330.0 feet along the forest reserve to the center of the Kalauao Stream; Thence down the center of the Kalauao Stream along the Ahupuaa of Kalauao for the next four courses by the following azimuths and distances:
38.  $71^{\circ} 00'$ —3270.0 feet;
39.  $43^{\circ} 30'$ —2140.0 feet;
40.  $73^{\circ} 45'$ —2975.0 feet;

41.  $37^{\circ} 39'$ —2869.4 feet;
42.  $37^{\circ} 05'$ —145.0 feet along the Ahupuaa of Kalauao to a pipe in concrete;
43.  $154^{\circ} 31'$ —70.20 feet along land of Alaeauui to a pipe in concrete;
44.  $92^{\circ} 00'$ —83.37 feet along same along stonewall to a pipe in concrete;
45.  $182^{\circ} 00'$ —40.0 feet along land of Alaeauui along fence to the center of Kalauao Stream; Thence down the center of the Kalauao Stream for the next thirteen courses by the following azimuths and distances:
46.  $71^{\circ} 25'$ —208.9 feet;
47.  $26^{\circ} 00'$ —220.4 feet;
48.  $20^{\circ} 29'$ —280.1 feet;
49.  $40^{\circ} 20'$ —50.0 feet;
50.  $34^{\circ} 56'$ —105.7 feet;
51.  $40^{\circ} 27'$ —33.9 feet;
52.  $70^{\circ} 39' 30''$ —119.8 feet;
53.  $64^{\circ} 16'$ —70.2 feet;
54.  $40^{\circ} 00'$ —62.5 feet;
55.  $346^{\circ} 10'$ —57.3 feet;
56.  $58^{\circ} 25'$ —135.0 feet;
57.  $93^{\circ} 15'$ —108.0 feet;
58.  $63^{\circ} 55'$ —107.1 feet;
59.  $139^{\circ} 47' 30''$ —338.4 feet along Grant 169 to Wm. E. Gill to a pipe in concrete;
60.  $60^{\circ} 01' 30''$ —321.0 feet along same;
61.  $65^{\circ} 40'$ —76.5 feet along same to a pipe;
62.  $334^{\circ} 05'$ —87.1 feet along same;
63.  $59^{\circ} 00'$ —42.2 feet along same to a pipe;
64.  $326^{\circ} 55'$ —92.0 feet along same to a pipe;

65.  $278^{\circ} 05'$ —52.5 feet along same to the center of the Kalauao Stream; Thence down the center of the Kalauao Stream for the next five courses by the following azimuths and distances:
66.  $77^{\circ} 48' 40''$ —301.1 feet;
67.  $88^{\circ} 28'$ —107.5 feet;
68.  $116^{\circ} 15'$ —120.0 feet;
69.  $87^{\circ} 04'$ —99.3 feet;
70.  $64^{\circ} 00'$ —90.0 feet;
71.  $355^{\circ} 44' 30''$ —33.9 feet along Grant 171 to Kuaana to a pipe;
72.  $50^{\circ} 15'$ —500.3 feet along same to a pipe in concrete;
73.  $42^{\circ} 00'$ —16.0 feet along same; Thence along high water mark for the next three courses, the direct azimuths and distances being:
74.  $124^{\circ} 45'$ —130.0 feet;
75.  $238^{\circ} 00'$ —91.0 feet;
76.  $123^{\circ} 59' 30''$ —1505.3 feet;
77.  $136^{\circ} 52'$ —153.67 feet along the Southwesterly side of the Oahu Railway and Land Company's railroad right of way;
78.  $198^{\circ} 24'$ —45.5 feet across the Oahu Railway and Land Company's railroad right of way and along the Ili of Waieli to the point of beginning and containing a gross area of 672.294 acres, as delineated on Bishop Estate Maps 2353, 2354, 2355 and 2356;

Excepting and Reserving, however, the following:

## EXCEPTION "A":

All kuleanas within the bounds of this parcel owned by other than the Lessors, being listed as follows:

L. C. Aw.	R.P.	Apana	Awardee	Area, Acres
9400	449	2	Hilo no Kaoio)	
9297	749	1 & 2	Kanikela )	4.304
5840 & 9308	755	1 & 2	Kuohao )	
5910 & 5934	446	—	Piko	1.653
9302	748	—	Kiikai	0.592
6184 & 9296	751	1 & 2	Ino	1.021
5577 & 9354	750	1 & 2	Kamakahiki	1.377
9353	746	1 & 2	Palau	0.999
5576 & 9313	3551	1, 2 & 3	Kuawahie	0.393
6104	747	—	Mahiai	2.068
6090	756	—	Makauwila no Lahela	
6156E	4813	1 & 2	Luahalikai	0.546
6054	447	—	Naue	1.259
5906	754	1 & 2	Walehau	1.152
School Grant 30, Apana 2			Pupue (3/8 interest)	0.283
				1.760
				<hr/>
				17.407

## EXCEPTION "B"

Kuleanas leased by the Lessors and listed as follows:

L. C. Aw.	R.P.	Apana	Awardee	Area, Acres
6156	753	1 & 2	Nua .....	1.097
5581	6799	1 & 2	Kalaimanuia .....	.450
				<hr/>
				1.547

## EXCEPTION "C"

All other lands not owned by the Lessors and listed as follows:

Portion L. C. Aw. 5524, R. P. 1963, Ap. 6 to L Konia Deeded April 7, 1908 .....	0.650
Portion L. C. Aw. 5524, R. P. 1963, Ap. 6 to L. Konia Deeded June 20, 1933 .....	0.741
Portion L. C. Aw. 5524, R. P. 1963, Ap. 6 to L. Konia Deeded September 29, 1931 .....	0.193
Portion L. C. Aw. 5524, R. P. 1963, Ap. 6 to L. Konia Deeded November 26, 1889 .....	1.840
Portion L. C. Aw. 5524, R. P. 1963, Ap. 6 to L. Konia, Portion L. C. Aw. 2494, R. P. 8145, Ap. 1 to Julia Kekoa, Portion L. C. Aw. 6156B, R. P. 745, Ap. 1 to Mahoe, Portion L. C. Aw. 6156, R. P. 753, Ap. 2 to Nua, Portion L. C. Aw. 5581, R. P. 6799, Ap. 1 & 2 to Kalaimanuia Deeded October 29, 1938 (Kamehameha Highway) .....	2.998
Portion L. C. Aw. 5524, R. P. 1963, Ap. 6 to L. Konia, Portion L. C. Aw. 5583, R. P. 448 to Kaawaole Deeded January 10, 1908 .....	0.870
Portion L. C. Aw. 5524, R. P. 1963, Ap. 6 to L. Konia, Portion L. C. Aw. 6156, R. P. 753, Ap. 1 to Nua Deeded April 16, 1937 (Moanalua Road) .....	3.882
Portion L. C. Aw. 5524, R. P. 1963, Ap. 6 to L. Konia (McShane House Lot) .....	0.450
Portion L. C. Aw. 5524, R. P. 1963, Ap. 6 to L. Konia, Deeded August 19, 1938 .....	0.340
<b>Total</b> .....	<b>11.970</b>
<b>Grand Total</b> .....	<b>30.924</b>
Total Gross Area .....	672.294 Acres
Less Exceptions "A", "B" and "C" .....	30.924 Acres
Net Area Demised .....	641.370 Acres

## PARCEL "D" (Waiau)

Comprising a portion of the Ili of Kumuulu,  
being L. C. Aw. 7713, R. P. 4475, Apana 35 to V.



Kamamalu, and portion of L. C. Aw. 10605, R. P. 6557, Apana 5 to J. Piikoi and of Grant 2861 to Joseph Narcisco, and being described as follows:

Beginning at a pipe in concrete near the West corner of this parcel of land adjoining the land of Waimano (L. C. Aw. 11029, Apana 3 to J. S. Stevenson), the coordinates of said point of beginning referred to Government Survey Triangulation Station "Ewa Church" being 139.9 feet South and 5759.3 feet East, and running thence by azimuths measured clockwise from true South:

1.  $197^{\circ} 30'$ —999.3 feet along L. C. Aw. 11029, Apana 3 to J. S. Stevenson to a "†" in set stone;
2.  $225^{\circ} 06'$ —1316.9 feet along same to a "†" on set stone;
3.  $217^{\circ} 06'$ —1716.0 feet along same to a pipe;
4.  $218^{\circ} 06'$ —1650.0 feet along same to a pipe;
5.  $206^{\circ} 37' 30''$ —1508.9 feet along same to the center of the Waiau Stream and passing over a "†" on set stone at 1433.9 feet; Thence up the center of the Waiau Stream along Government Land of Waimano to a point, the direct azimuth and distance being:
6.  $210^{\circ} 57' 30''$ —2124.7 feet;
7.  $203^{\circ} 30'$ —190.0 feet along Government Land of Waimano to a "†" on set stone; Thence along the center of ridge along same to a pipe in concrete, the direct azimuth and distance being:
8.  $238^{\circ} 24'$ —1411.0 feet;
9.  $227^{\circ} 14'$ —3166.7 feet along the Government Land of Waimano to an iron pin;

10.  $230^{\circ} 25'$ —2574.0 feet along fence along same to a pipe in concrete;
11.  $251^{\circ} 45'$ —933.5 feet along same to a pipe;
12.  $310^{\circ} 04'$ —490.5 feet along fence along forest reserve to a stake;
13.  $271^{\circ} 40'$ —1027 feet along fence along same to a pipe;
14.  $270^{\circ} 00'$ —780.0 feet along fence along same;
15.  $297^{\circ} 00'$ —1010.5 feet along fence along same to a pipe;
16.  $359^{\circ} 20'$ —240.0 feet along fence along same;
17.  $62^{\circ} 45'$ —235.5 feet along fence along same to a pipe;
18.  $66^{\circ} 00'$ —678.0 feet along fence along same;
19.  $49^{\circ} 15'$ —510.0 feet along fence along same;
20.  $16^{\circ} 30'$ —512.0 feet along fence along same to a pipe;
21.  $3^{\circ} 55'$ —1453.7 feet along fence along same to a pipe in concrete;
22.  $54^{\circ} 52'$ —100.0 feet along Land Court Application 950 to a pipe;
23.  $33^{\circ} 11'$ —532.2 feet along same to a pipe;
24.  $64^{\circ} 50'$ —600.0 feet along same to a pipe;
25.  $104^{\circ} 30'$ —680.0 feet along same to a pipe;
26.  $73^{\circ} 40'$ —450.0 feet along same to a pipe;
27.  $112^{\circ} 00'$ —360.0 feet along same to a pipe;
28.  $71^{\circ} 50'$ —450.0 feet along same to a pipe;
29.  $58^{\circ} 54'$ —2907.0 feet along same to a “†” on set stone;
30.  $70^{\circ} 24'$ —1431.7 feet along same to the center of the Waimalu Stream and passing over a pipe at 1411.7 feet; Thence down the center of the

Waimahu Stream along Land Court Application 950 for the next twenty-six courses, the direct azimuths and distances being:

31.  $160^{\circ} 31'$ —67.8 feet;
32.  $103^{\circ} 52'$ —92.0 feet;
33.  $60^{\circ} 22'$ —76.3 feet;
34.  $54^{\circ} 57'$ —143.6 feet;
35.  $65^{\circ} 38'$ —69.4 feet;
36.  $57^{\circ} 50'$ —151.1 feet;
37.  $32^{\circ} 38'$ —100.4 feet;
38.  $47^{\circ} 46'$ —124.8 feet;
39.  $78^{\circ} 34'$ —181.0 feet;
40.  $65^{\circ} 58'$ —72.2 feet;
41.  $8^{\circ} 13'$ —179.4 feet;
42.  $27^{\circ} 00'$ —113.8 feet;
43.  $12^{\circ} 42'$ —121.0 feet;
44.  $38^{\circ} 41'$ —150.8 feet;
45.  $65^{\circ} 30'$ —150.0 feet;
46.  $40^{\circ} 28'$ —61.7 feet;
47.  $356^{\circ} 14'$ —88.6 feet;
48.  $5^{\circ} 20'$ —170.6 feet;
49.  $16^{\circ} 00'$ —91.0 feet;
50.  $12^{\circ} 02'$ —160.3 feet;
51.  $339^{\circ} 47'$ —84.6 feet;
52.  $0^{\circ} 37'$ —103.0 feet;
53.  $29^{\circ} 58'$ —77.4 feet;
54.  $52^{\circ} 02'$ —162.8 feet;
55.  $30^{\circ} 30'$ —71.5 feet;
56.  $336^{\circ} 31'$ —123.0 feet;
57.  $53^{\circ} 26'$ —980.0 feet along Land Court Application 950 to a “†” on set stone and passing over a pipe at 44.4 feet;

58.  $13^{\circ} 50'$ —778.1 feet along same to a “†” on set stone;
59.  $359^{\circ} 25'$ —601.0 feet along same to a pipe;
60.  $18^{\circ} 57'$ —2794.6 feet along same to a point on the North side of Moanalua Road, from which the direct azimuth and distance to a pipe in concrete is  $18^{\circ} 57' 51.70$  feet;
61.  $94^{\circ} 14'$ —12.12 feet along the North side of Moanalua Road;
62.  $96^{\circ} 34'$ —176.69 feet along same;
63.  $102^{\circ} 30'$ —209.85 feet along same;
64.  $105^{\circ} 11'$ —417.84 feet along same;
65.  $87^{\circ} 05'$ —67.14 feet along same to a “†” on set stone;
66.  $76^{\circ} 19' 30''$ —702.30 feet along same;
67.  $82^{\circ} 32'$ —250.00 feet along same;
68.  $75^{\circ} 40'$ —408.40 feet along same;
69.  $81^{\circ} 39'$ —50.00 feet along same;
70.  $90^{\circ} 34'$ —89.22 feet along same;
71.  $95^{\circ} 34'$ —119.40 feet along same;
72.  $104^{\circ} 00'$ —16.82 feet along same;
73.  $107^{\circ} 50'$ —65.00 feet along same;
74.  $115^{\circ} 20'$ —65.30 feet along same;
75.  $120^{\circ} 40'$ —57.70 feet along same;
76.  $120^{\circ} 29'$ —175.79 feet along same;
77.  $96^{\circ} 20'$ —127.50 feet along same;  
Thence on a curve to the right with a radius of 300.0 feet along same for the next two courses, the chord azimuths and distances being:
78.  $97^{\circ} 26' 15''$ —11.56 feet;
79.  $107^{\circ} 15' 00''$ —90.84 feet;

80.  $115^{\circ} 57' 30''$ —12.51 feet along the Northerly side of Kamehameha Highway;
81.  $196^{\circ} 45' 00''$ —55.85 feet;
82.  $120^{\circ} 44' 30''$ —161.57 feet;
83.  $27^{\circ} 49' 00''$ —23.54 feet;
84.  $120^{\circ} 59' 00''$ —23.90 feet;
85.  $111^{\circ} 10' 00''$ —61.77 feet;
86.  $177^{\circ} 39' 00''$ —28.60 feet;
87.  $197^{\circ} 30' 00''$ —23.82 feet along L. C. Aw. 11029, Ap. 3 to J. S. Stevenson to the point of beginning and containing a net area of 1037.454 acres, as delineated on Bishop Estate Maps 2565, 2566 and 2567.

PARCEL "E" (Waiau and Waimalu)

Comprising a portion of the Ili of Kumuulu, being L. C. Aw. 7713, R. P. 4475, Apana 35 to V. Kamamalu; portion of land conveyed by Kamehameha IV to A. Phillips; and Lot 4-A, area 0.69 acre, of Land Court Application 950, being all of the land described in Owners' Transfer Certificate of Title 16654 issued to the Trustees of the Bernice P. Bishop Estate; and being described as follows:

Beginning at a pipe in concrete monument on the North side of this parcel of land, said point being also the North corner of Lot 4-A of Land Court Application 950 and running thence by azimuths measured clockwise from true South:

1.  $274^{\circ} 14'$ —126.4 feet along the Southerly side of Moanalua Road;
2.  $12^{\circ} 46'$ —240.0 feet along Lot 4-B of Land Court Application 950;



3.  $9^{\circ} 14'$  126.4 feet along same;
4.  $12^{\circ} 46'$ —153.1 feet along same;
5.  $28^{\circ} 20'$ —176.3 feet along same;
6.  $64^{\circ} 45'$ —138.2 feet along portion of Grant 130 to S. P. Hanchett;
7.  $19^{\circ} 40'$ —340.45 feet;
8.  $129^{\circ} 35'$ —13.71 feet;
9.  $190^{\circ} 40'$ —282.30 feet;
10.  $282^{\circ} 30'$ —12.01 feet along the Southerly side of Moanalua Road;
11.  $276^{\circ} 34'$ —180.30 feet along same to the point of beginning and containing an area of 2.935 acres, as delineated on Bishop Estate Map 2565.

#### PARCEL "F" (Waiau)

Comprising a portion of the land of Kaakauwaihau, being L. C. Aw. 3834 and 7244, Part 1, R. P. 7268 to Puhi, and being described as follows:

Beginning at a concrete post marked "†" at the South corner of this parcel and on the Northeast side of the Oahu Railway and Land Company's 40-foot right of way, the same being the initial point of Land Court Application 950, the coordinates of said point of beginning referred to Government Survey Triangulation Station "Ewa Church" being 2418.3 feet South and 8005.8 feet East, and running thence by azimuths measured clockwise from true South:

Along the Northeast side of the Oahu Railway and Land Company's 40-foot right of way, the direct azimuth and distance being:

1.  $137^{\circ} 16'$ —823.0 feet more or less;
2.  $229^{\circ} 21'$ —104.0 feet more or less, along Bishop Estate land;
3.  $219^{\circ} 21'$ —357.1 feet along L. C. Aw. 9410B, Apana 3, to Kanealii Wahaolelo to a concrete post marked “†”;
4.  $316^{\circ} 52'$ —292.4 feet along Grant 130 to S. P. Hanchett to a concrete post marked “†”;
5.  $324^{\circ} 02'$ —148.0 feet along same to a concrete post marked “†”;
6.  $30^{\circ} 25'$ —79.0 feet along Land Court Application 950 to the point of beginning and containing an area of 2.130 acres, as delineated on Bishop Estate Map 627.

#### PARCEL “G” (Waimano)

Comprising a portion of the land of Waimano, being L. C. Aw. 7713, R. P. 4475, Ap. 47 to V. Kamamalu, and being described as follows:

Beginning at an “arrow” cut in concrete at the Northeast corner of this parcel and on the South side of Kamehameha Highway, the coordinates of said point of beginning referred to Government Survey Triangulation Station “Ewa Church” being 152.06 feet South and 5414.21 feet East, and running thence by azimuths measured clockwise from true South:

1.  $358^{\circ} 54'$ —140.90 feet along L. C. Aw. 11029, Ap. 2 to J. S. Stevenson to a “†” on rock;
2.  $343^{\circ} 24'$ —69.20 feet along same to a pipe;
3.  $69^{\circ} 34'$ —65.20 feet along same to a pipe;
4.  $344^{\circ} 20'$ —17.00 feet along same to a pipe;

5. 62° 01'—108.75 feet along Bishop Estate land to a pipe;
6. 74° 42'—45.54 feet along same to a pipe;
7. 99° 27'—62.85 feet along same to a pipe;
8. 114° 37'—158.60 feet along same to a pipe;
9. 28° 58'—36.68 feet along same to a pipe;
10. 64° 11'—30.00 feet along Grant 237 to P. F. Manini to a “†” on concrete post;
11. 143° 15'—56.85 feet along same to a “†” on concrete post;
12. 234° 30'—466.60 feet along same to a “†” cut in concrete;
13. 295° 57' 30"—87.26 feet along the South side of Kamehameha Highway to the point of beginning and containing an area of 2.067 acres, as delineated on Bishop Estate Maps 627 and 2565.

PARCEL “H” (Portion of Waiawa and  
Manana-iki)

Comprising a portion of the Ahupuaa of Waiawa, being L. C. Aw. 7713, R. P. 4475, Apana 46 to Victoria Kamamalu; a portion of Manana-iki (Ili of Poupouwela) being L. C. Aw. 7713, R. P. 4475, Apana 48 to Victoria Kamamalu; all of L. C. Aw. 9320, Apanas 1, 2 and 3 to Keoho; and all of L. C. Aw. 9372, Apanas 1 and 2 to Keiki, and being described as follows:

Beginning at a point at the Northeast corner of this parcel of land, and on the South side of Kamehameha Highway, the coordinates of said point of beginning referred to Government Survey Triangulation

gulation Station "Ewa Church" being 853.31 feet North and 2853.44 feet East, and running thence by azimuths measured clockwise from true South:

1.  $46^{\circ} 36'$ —639.17 feet along fence to a pipe in concrete;
2.  $145^{\circ} 20'$ —175.0 feet along Grant 159 to J. Lovell and L. C. Aw. 9372, Apana 2 to Homaiikawaa;
3.  $72^{\circ} 30'$ —93.0 feet along L. C. Aw. 9378, Apana 2 to Homaiikawaa;
4.  $45^{\circ} 20'$ —106.0 feet along same;
5.  $131^{\circ} 00'$ —41.6 feet along Grant 159 to J. Lovell;
6.  $50^{\circ} 30'$ —52.2 feet along same;
7.  $309^{\circ} 00'$ —20.5 feet along same;
8.  $52^{\circ} 00'$ —140.6 feet along same;
9.  $324^{\circ} 00'$ —43.0 feet along same;
10.  $58^{\circ} 00'$ —66.0 feet along same;
11.  $140^{\circ} 30'$ —77.4 feet along L. C. Aw. 7723, Apana 1 to Hopoe;
12.  $63^{\circ} 00'$ —184.0 feet along same and along Grant 159 to J. Lovell;
13.  $45^{\circ} 30'$ —332.1 feet along L. C. Aw. 7723, Apana 2 to Hopoe and along Grant 159 to J. Lovell to the center of Waiwa Stream; Thence up the center of Waiwa Stream for the next thirteen courses by the following azimuths and distance:
14.  $108^{\circ} 03'$ —319.4 feet;
15.  $115^{\circ} 30'$ —222.0 feet;
16.  $127^{\circ} 30'$ —293.7 feet;
17.  $173^{\circ} 02'$ —349.5 feet;

18.  $180^{\circ} 10'$ —355.3 feet;
19.  $180^{\circ} 00'$ —49.0 feet;
20.  $185^{\circ} 00'$ —80.0 feet;
21.  $161^{\circ} 30'$ —162.0 feet;
22.  $145^{\circ} 30'$ —195.0 feet;
23.  $48^{\circ} 00'$ —70.0 feet;
24.  $91^{\circ} 15'$ —150.0 feet;
25.  $104^{\circ} 45'$ —102.2 feet;
26.  $131^{\circ} 05'$ —85.3 feet to the South side of Kamehameha Highway;
27.  $266^{\circ} 29'$ —23.70 feet along the South side of Kamehameha Highway;
28.  $176^{\circ} 29'$ —15.00 feet along Kamehameha Highway;
29.  $266^{\circ} 29'$ —128.37 feet along the South side of Kamehameha Highway; Thence on a curve to the right with a radius of 1397.5 feet along same, the direct azimuth and distance being:
30.  $267^{\circ} 41' 30''$ —58.90 feet;
31.  $358^{\circ} 54'$ —20.00 feet along Kamehameha Highway; Thence on a curve to the right with a radius of 1377.5 feet along the South side of Kamehameha Highway, the direct azimuth and distance being:
32.  $271^{\circ} 58' 30''$ —147.78 feet;
33.  $185^{\circ} 03'$ —20.00 feet along Kamehameha Highway; Thence on a curve to the right with a radius of 1397.5 feet, along the South side of Kamehameha Highway, the direct azimuth and distance being:
34.  $281^{\circ} 12'$ —299.42 feet;



35.  $287^{\circ} 21'$ —100.03 feet along same to a concrete monument;
36.  $287^{\circ} 25'$ —289.76 feet along the South side of Kamehameha Highway;
37.  $17^{\circ} 25'$ —5.00 feet along same;
38.  $287^{\circ} 25'$ —250.00 feet along same;
39.  $197^{\circ} 25'$ —5.00 feet along same;
40.  $287^{\circ} 25'$ —250.00 feet along same;
41.  $17^{\circ} 25'$ —5.00 feet along same;
42.  $287^{\circ} 25'$ —27.03 feet along same; Thence on a curve to the right with a radius of 5595.72 feet along same, the chord and azimuth and distance being:
43.  $288^{\circ} 52' 15''$ —284.01 feet;
44.  $290^{\circ} 19' 30''$ —86.90 feet along same;
45.  $200^{\circ} 19' 30''$ —5.00 feet along same;
46.  $290^{\circ} 19' 30''$ —848.37 feet along same to the point of beginning and containing a gross area of 45.084 acres, as delineated on Bishop Estate Maps 963 and 2582.

Excepting and Reserving, however, the following:

## EXCEPTION "A"

All of the kuleanas within the bounds of this parcel owned by other than the Lessors, and listed as follows:

L. C. Aw.	R.P.	Apana	Awardee	Area, Acres
7732	871	2	Manuiki no Kapae ....	0.700
9373	223	—	Kamoku .....	0.520
9376	875 & 5311	1 & 2	Kupihea .....	1.218
9377	208	1 & 2	Lio .....	1.306
				<hr/> 3.744

Gross Area ..... 45.084 Acres

Less Exception "A" ..... 3.744 Acres

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Net Area Demised ..... 41.340 Acres

## PARCEL "I" (Portion of Ahupuaa of Waiawa)

Comprising a portion of the Ahupuaa of Waiawa, being L. C. Aw. 7713, R. P. 4475, Apana 46 to Victoria Kamamalu; a portion of Manana-iki (Ili of Poupouwela), being L. C. Aw. 7713, R. P. 4475, Apana 48 to Victoria Kamamalu, and being described as follows:

Beginning at a point at the Southeast corner of this parcel, on the Southwest side of Grant 2060 to J. Raymond and L. Bernard, and on the North side of Kamehameha Highway, the coordinates of said point of beginning referred to Government Survey Triangulation Station "Ewa Church" being 932.44 feet North and 2813.47 feet East, and running thence by azimuths measured clockwise from true South:

1. 110° 19' 30"—788.21 feet along the North side of Kahehameha Highway;
2. 200° 19' 30"—5.00 feet along same;

3.  $110^{\circ} 19' 30''$ —86.90 feet along same; Thence on a curve to the left with a radius of 5675.72 feet along same, the chord azimuth and distance being:
4.  $108^{\circ} 52' 15''$ —288.07 feet;
5.  $107^{\circ} 25'$ —27.03 feet along same;
6.  $17^{\circ} 25'$ —5.00 feet along same;
7.  $107^{\circ} 25'$ —250.00 feet along same;
8.  $197^{\circ} 25'$ —5.00 feet along same;
9.  $107^{\circ} 25'$ —250.00 feet along same;
10.  $17^{\circ} 25'$ —5.00 feet along same;
11.  $107^{\circ} 25'$ —289.84 feet along same;
12.  $107^{\circ} 21'$ —100.03 feet along the North side of Kamehameha Highway; Thence on a curve to the left with a radius of 1467.5 feet along same, the direct azimuth and distance being:
13.  $98^{\circ} 38'$ —444.79 feet;
14.  $165^{\circ} 00'$ —176.49 feet along stonewall along Bishop Estate land;
15.  $224^{\circ} 23'$ —88.8 feet along fence along L. C. Aw. 10942, Apana 1 to Wm. Wallace to a “†” on concrete post;
16.  $130^{\circ} 21'$ —148.8 feet along same to a “†” on concrete post;
17.  $43^{\circ} 16'$ —81.9 feet along same to a stonewall; Thence along stonewall along Bishop Estate land to a “†” on concrete post, the direct azimuth and distance being:
18.  $106^{\circ} 30'$ —107.0 feet;
19.  $87^{\circ} 06'$ —203.6 feet along stonewall along L. C. Aw. 10942, Apana 2, to Wm. Wallace to a “†” on concrete post; Thence along stonewall

along Bishop Estate land to a “†” on a rock, the direct azimuth and distance being:

20.  $100^{\circ} 11'$ —219.6 feet;
21.  $114^{\circ} 14'$ —102.5 feet;
22.  $100^{\circ} 00'$ —216.0 feet along stonewall along L. C. Aw. 10942, Apana 4 to Wm. Wallace;
23.  $104^{\circ} 10'$ —110.0 feet along stonewall along L. C. Aw. 4213, Apana 1 to Kauhi;
24.  $98^{\circ} 52'$ —233.1 feet along stonewall along L. C. Aw. 5591 and 9357 to Kekua to a “†” on concrete post; Thence along fence along side of pali to the top of Waiawa gulch for the next four courses, by the following azimuths and distances:
25.  $140^{\circ} 30'$ —222.0 feet;
26.  $93^{\circ} 05'$ —230.0 feet;
27.  $163^{\circ} 21'$ —231.5 feet;
28.  $214^{\circ} 30'$ —130.0 feet;

Thence along the top of pali along the Easterly side of Waiawa gulch for the next fourteen courses, by the following azimuths and distances:

29.  $170^{\circ} 30'$ —119.7 feet;
30.  $215^{\circ} 37'$ —821.5 feet;
31.  $231^{\circ} 15'$ —830.0 feet;
32.  $207^{\circ} 27'$ —430.0 feet;
33.  $273^{\circ} 40'$ —806.5 feet;
34.  $226^{\circ} 06'$ —750.00 feet;
35.  $192^{\circ} 27'$ —930.00 feet;
36.  $213^{\circ} 15'$ —668.0 feet;
37.  $241^{\circ} 00'$ —1162.0 feet;
38.  $220^{\circ} 45'$ —664.0 feet;

39.  $236^{\circ} 40'$ —580.0 feet;
40.  $267^{\circ} 10'$ —315.0 feet;
41.  $281^{\circ} 35'$ —598.5 feet;
42.  $249^{\circ} 43'$ —510.0 feet;
43.  $11^{\circ} 40'$ —60.0 feet along Grant 2060 to J. Raymond and L. Bernard to a pipe;
44.  $21^{\circ} 43'$ —528.0 feet along same;
45.  $33^{\circ} 59'$ —4546.0 feet along same;
46.  $8^{\circ} 14'$ —726.0 feet along same;
47.  $8^{\circ} 06'$ —1254.0 feet along same;
48.  $311^{\circ} 41'$ —787.25 feet along same to the point of beginning and containing a net area of 365.883 acres, as delineated on Bishop Estate Map 2582.

PARCEL “J” (Portion of Ahupuaa of Waiawa)

Comprising a portion of the Ahupuaa of Waiawa, being L. C. Aw. 7713; R. P. 4475, Apana 46 to Victoria Kamamalu, and being described as follows:

Beginning at a pipe in concrete at the East corner of this parcel of land, the same being on the Westerly side of Grant 2060 to J. Raymond and L. Bernard, the direct azimuth and distance to a Triangulation Station called “Camp” being  $326^{\circ} 53'$  430.41 feet and **the coordinates of the above** described initial point referred to Government Survey Triangulation Station “Ewa Church” being 10397.3 feet North and 6164.9 feet East, and thence running by azimuths measured clockwise from true South:

1.  $24^{\circ} 39'$ —1570.8 feet along Grant 2060 to J. Raymond and L. Bernard to a pipe;



2.  $11^{\circ} 40'$ —108.7 feet along same to edge of pali;  
Thence along edge of pali for the next six courses by the following azimuths and distances:
3.  $86^{\circ} 12'$ —594.4 feet;
4.  $195^{\circ} 30'$ —310.0 feet;
5.  $232^{\circ} 20'$ —275.5 feet;
6.  $100^{\circ} 00'$ —141.0 feet;
7.  $181^{\circ} 30'$ —706.0 feet;
8.  $238^{\circ} 30'$ —1231.0 feet;
9.  $351^{\circ} 28'$ —270.0 feet along Grant 2060 to J. Raymond and L. Bernard to the point of beginning and containing a net area of 25.86 acres, as delineated on Bishop Estate Map 2583.

PARCEL "K" (Forest Reserve, Ahupuaa of  
Halawa)

Comprising a portion of the Ahupuaa of Halawa, being L. C. Aw. 7712 and L. C. Aw. 8516B, R. P. 6717 to M. Kekuanaoa and Kamaikui, and being described as follows:

Beginning at Government Survey Triangulation Station "Halawa Barrel" on the ridge between North and South Halawa, the same being the end of Course 39 of Land Court Application 966, the coordinates of said point of beginning referred to Government Survey Triangulation Station "Salt Lake" being 9448.3 feet North and 6612.0 feet East, and thence running by azimuths measured clockwise from true South:

1.  $60^{\circ} 47'$ —2036.9 feet along Land Court Application 966 to a "†" on large rock;

2.  $120^{\circ} 10' 30''$ —2069.1 feet along Bishop Estate land;
3.  $211^{\circ} 21'$ —629.8 feet along same along top of pali to a pipe;
4.  $190^{\circ} 08'$ —643.0 feet along same to a pipe in concrete marked "103";
5. Thence along the center of the ridge between North Halawa and Aiea to a place called "Pu'u Uau";
6. Thence along the center of the ridge between Kalauao and North Halawa to the top of the Koolau Range;
7. Thence along the top of the Koolau Range along the land of Heeia to a pipe at the end of Course 160 of Land Court Application 1100; Thence along the top of the Koolau Range along Land Court Application 1100 for the next five courses, by the following azimuths and distances:
  8.  $352^{\circ} 06'$ —1507.60 feet to a pipe;
  9.  $321^{\circ} 36'$ —635.10 feet to a pipe;
  10.  $47^{\circ} 45'$ —1437.30 feet to a pipe;
  11.  $0^{\circ} 18'$ —787.80 feet to a pipe;
  12.  $2^{\circ} 31'$ —1436.70 feet to a pipe;
  13. Thence down the center of the ridge between North and South Halawa to the point of beginning and containing an area of 2325 Acres, as delineated on Bishop Estate Map 2387.

## PARCEL "L" (Forest Reserve, Ili of Kaonohi)

Comprising a portion of the Ili of Kaonohi, being L. C. Aw. 5524, R. P. 1963, Apana 6 to L. Konia, and being described as follows:

Beginning a a standard "F. R. Mon." on ridge on the Westerly side of this parcel of land, the coordinates of which referred to Government Survey Triangulation Station "Salt Lake" being 13845.0 feet North and 630.9 feet West, and thence running by azimuths measured clockwise from true South:

1.  $156^{\circ} 59'$ —581.0 feet along Bishop Estate land;
2.  $221^{\circ} 21'$ —102.2 feet along the Ili of Waieli to a  $1\frac{1}{4}$  inch pipe;
3.  $175^{\circ} 15'$ —971.6 feet down spur and across Hanaiki Valley to a pipe on ridge;
4.  $235^{\circ} 27'$ —717.5 feet along ridge to a pipe; Thence along the center of ridge, along Land Court Application 950 for the next two courses, by the following azimuths and distances:
5.  $246^{\circ} 00' 30''$ —921.7 feet to a pipe;
6.  $241^{\circ} 31'$ —885.65 feet to a pipe; Thence along the center of the ridge, along Parcel 2 of Land Court Application 344 for the next two courses, by the following azimuths and distances:
7.  $247^{\circ} 54'$ —2155.2 feet to a pipe;
8.  $246^{\circ} 28' 30''$ —1943.8 feet to a pipe; Thence along the center of ridge along L. C. Aw. 8525B, Apana 3 to Julia Alapai Kauwa to a pipe, the direct azimuth and distance being:
9.  $240^{\circ} 27'$ —1379.4 feet; Thence along the center of ridge along Parcel 1 of Land Court Appli-

cation 344 to a pipe, the direct azimuth and distance being:

10.  $252^{\circ} 38'$ —93.4 feet;
11. Thence up along the center of ridge along the remainder of the land of Waimalu to the top of the Koolau Range;
12. Thence along the top of the Koolau Range in a Southeasterly direction along Kahaluu and a portion of Heeia to the dividing ridge between the Ahupuaa of Kalauao and North Halawa;
13. Thence down the center of the Kalauao Stream along the Ahupuaa of Kalauao to the makai boundary of the forest reserve;
14.  $138^{\circ} 45' 25''$ —932.4 feet along Bishop Estate land to the point of beginning and containing an area of 865 Acres, as delineated on Bishop Estate Map 2387.

PARCEL "M" (Forest Reserve, Ili of Kumuulu)

Comprising a portion of the Ili of Kumuulu, being L. C. Aw. 7713, R. P. 4475, Apana 35 to Victoria Kamamalu, and being described as follows:

Beginning at a pipe in concrete at the South corner of this parcel of land, the same being the end of Course 57 of Land Court Application 950, the coordinates of said point of beginning referred to Government Survey Triangulation Station "Ewa Church" being 8876.1 feet North and 18913.4 feet East, and thence running by azimuths measured clockwise from true South:

1.  $183^{\circ} 55'$ —1453.7 feet along Bishop Estate land to a pipe;

2.  $196^{\circ} 30'$ —512.0 feet along same;
3.  $229^{\circ} 15'$ —510.0 feet along same;
4.  $246^{\circ} 00'$ —678.0 feet along same to a pipe;
5.  $242^{\circ} 45'$ —235.5 feet along same;
6.  $179^{\circ} 20'$ —240.0 feet along same to a pipe;
7.  $117^{\circ} 00'$ —1010.5 feet along same;
8.  $90^{\circ} 00'$ —780.0 feet along same to a pipe;
9.  $91^{\circ} 40'$ —1027 feet along same to a stake;
10.  $130^{\circ} 04'$ —495.0 feet along same to a pipe;
11.  $251^{\circ} 45'$ —2440.0 feet more or less, along the Government land of Waimano to a point on ridge;
12. Thence up the center of ridge adjoining the Government land of Waimano to the top of the Koolau Range;
13. Thence along the top of the Koolau Range along Waihee to a pipe at the end of Course 93 of Land Court Application 950; Thence down the center of ridge along Land Court Application 950 for the next 30 courses, by the following azimuths and distances:
14.  $60^{\circ} 47'$ —1051.0 feet;
15.  $45^{\circ} 30'$ —610.0 feet;
16.  $80^{\circ} 00'$ —860.0 feet;
17.  $9^{\circ} 00'$ —200.0 feet;
18.  $70^{\circ} 00'$ —1340.0 feet;
19.  $107^{\circ} 30'$ —530.0 feet;
20.  $45^{\circ} 55'$ —2868.0 feet;
21.  $339^{\circ} 30'$ —920.0 feet;
22.  $22^{\circ} 00'$ —250.0 feet;
23.  $120^{\circ} 00'$ —310.0 feet;
24.  $64^{\circ} 00'$ —530.0 feet;



25.  $109^{\circ} 54'$ —502.0 feet;
26.  $50^{\circ} 00'$ —460.0 feet;
27.  $85^{\circ} 00'$ —450.0 feet;
28.  $75^{\circ} 30'$ —550.0 feet;
29.  $46^{\circ} 00'$ —1160.0 feet;
30.  $87^{\circ} 00'$ —680.0 feet;
31.  $18^{\circ} 00'$ —280.0 feet;
32.  $64^{\circ} 50'$ —1450.0 feet;
33.  $3^{\circ} 30'$ —140.0 feet;
34.  $50^{\circ} 31'$ —513.0 feet to a pipe;
35.  $66^{\circ} 04'$ —730.1 feet;
36.  $88^{\circ} 20'$ —500.0 feet;
37.  $79^{\circ} 36'$ —1026.5 feet;
38.  $47^{\circ} 50'$ —200.0 feet;
39.  $47^{\circ} 40'$ —190.0 feet;
40.  $84^{\circ} 10'$ —180.0 feet;
41.  $84^{\circ} 30'$ —180.0 feet;
42.  $73^{\circ} 50'$ —220.0 feet;
43.  $73^{\circ} 20'$ —250.0 feet to a pipe;
44.  $63^{\circ} 03'$ —522.7 feet along Land Court Application 950 to a pipe;
45.  $88^{\circ} 08'$ —685.9 feet along same to a pipe;
46.  $76^{\circ} 04'$ —292.4 feet along same to a pipe;
47.  $79^{\circ} 13'$ —485.5 feet along same to a pipe;
48.  $62^{\circ} 10'$ —275.9 feet along same to a pipe;
49.  $77^{\circ} 00'$ —439.4 feet along same to the point of beginning and containing an area of 1170 Acres, as delineated on Bishop Estate Map 2387.

Together with all the buildings and improvements thereon.

Excepting and always reserving out of this demise:

(a) All rights granted by the Trustees of the Bernice P. Bishop Estate to the United States of America by Perpetual Easement dated September 26, 1923, recorded in said Registry in Book 704, page 1, to construct and forever operate and maintain utilities through, over and across portions of Parcel "A-2" (Halawa) of the lands hereby demised; and also all rights granted by the Lessors herein to the United States of America by Perpetual Easement dated May 28, 1940, recorded in said Registry in Book 1581, page 385, to construct and forever operate and maintain an underground communication cable line through and across portions of Parcel "A" (Halawa) of the lands hereby demised;

(b) The pole and wire lines of The Hawaiian Electric Company, Limited, as shall, at the commencement of the term of this lease, have been constructed over and across portions of the lands hereby demised, under easements granted by the Trustees of the Bernice P. Bishop Estate, together with all rights appurtenant thereto, and the renewals, extensions and replacements of said easements hereafter to be granted by the Lessors;

(c) All lands which the Lessors may require or deem necessary or desirable as rights-of-way for pole and wire lines of all kinds to be constructed and maintained by them or their assigns (either in addition to or in substitution for any existing pole and wire lines) upon, over or across the lands

hereby demised from any point or points in any direction, including all reasonable right of entry upon the demised premises for the construction, repair and maintenance of the same in efficient use and condition; it being understood and agreed that the Lessors' rights in this respect will be exercised in such manner as to occasion the Lessee the least possible interference with its use of the demised premises;

(d) The right unto the Lessors and their tenants and lessees of adjoining and neighboring lands reasonably to use, in common with the Lessee, such roads and trails as may exist upon the lands hereby demised;

(e) All antiquities, including all specimens of Hawaiian or other ancient art or handicraft which may be on the lands hereby demised during the term of this lease, together with the right at all times, either personally or by their agents, to enter the said lands for the purpose of searching and exploring for such antiquities and of removing the antiquities found thereon;

And subject to Bishop Estate Lease No. 2448 to Honolulu Plantation Company which will expire on August 31, 1940, the rent reserved thereunder to be paid by the Lessee until its expiration.

Subject also to the subleases heretofore made by the Lessee herein as lessee under said Bishop Estate Lease No. 5500, of portions of the lands hereby demised, to wit:

1. Sublease dated March 27, 1937, to Makiyo Sumida, of 6.01 acres of land at Kalauao, expiring

September 30, 1941, and reserving a net rental of \$230.00 per annum;

2. Sublease dated March 29, 1937, to Say Yuen, of approximately 2.16 acres of land at Kalauao, expiring September 30, 1941, and reserving a net rental of \$175.00 per annum;

3. Sublease dated July 3, 1937, to Kam Hee, of approximately 1.37 acres of land in the Ili of Kaonohi, at Kalauao, expiring September 30, 1942, and reserving a net rental of \$40.00 per annum;

4. Sublease dated November 27, 1937, to Konobu Kubo, of 0.816 acre of land at Piomoewai, in Hala-wa, expiring September 30, 1947, as modified thereafter by agreement dated February 7, 1938, reducing the rental reserved under this sublease from \$130.00 per annum to \$75.00 per annum effective as of October 1, 1937;

5. Sublease dated December 29, 1937, to R. Ip-pongi, of approximately 0.905 acre of land in the Ili of Kaonohi, at Kalauao, expiring December 31, 1939, and running from year to year thereafter, and reserving a net rental of \$27.00 per annum;

6. Sublease dated February 12, 1938, to Jikuo Yasutake, of approximately 0.052 acre of land at Waimano, expiring January 31, 1943, and reserving a net rental of \$1.00 per annum;

7. Sublease dated April 7, 1938, to Annie K. Akana, of 0.032 acre of land in the Ili of Kaonohi, at Kalauao, expiring March 31, 1965, and reserving a net rental of \$1.00 per annum;

8. Sublease dated August 15, 1938, to Libby, McNeill & Libby, of 25.86 acres of land at Waiawa,

expiring June 30, 1945, and reserving a net rental of \$254.50 per annum;

9. Sublease dated April 19, 1940, to The Hawaiian Electric Company, Limited, of easement rights for the construction, operation and maintenance of pole and wire lines over and across a certain parcel of land, ten feet wide, at Kalauao, expiring December 31, 1965, at a paid-up nominal rental of \$1.00 for the whole of the term; and

10. Sublease dated October 30, 1940, to the United States of America, of easement rights for the construction, operation and maintenance of a railroad for military purposes and cable and pipe lines over and across a certain parcel of land at Halawa, expiring December 31, 1965, at a paid-up nominal rental of \$1.00 for the whole of the term; which said subleases shall remain in force according to their respective terms and conditions;

To Have and To Hold the demised premises unto the Lessee from the first day of July, 1940, for the term of twenty-five (25) years and six (6) months thence next ensuing, subject to said exceptions and reservations and to said Lease No. 2448 and subject to the aforesaid subleases, the Lessee Yielding and Paying therefor during the said term unto the Lessors rent as follows:

#### A. MINIMUM RENTAL:

The minimum rent for the lands hereby demised, based on Fifteen Dollars (\$15.00) per acre per annum for "Cane Lands", Five Dollars (\$5.00) per acre per annum for "Potential Cane Lands"



and none for "Miscellaneous Lands" and "Forest Reservation Lands", shall be Twenty-eight Thousand Seven Hundred Eighty-one and 62/100 Dollars (\$28,781.62) per annum, and shall be payable in two equal payments of \$14,390.81 each in advance on the first day of January and the first day of July in each and every year during the continuance of this lease, without any deduction, the first two of such payments to be made on the execution of these presents. Said minimum rent shall be decreased for the remainder of the term at the rate of Fifteen Dollars (\$15.00) per acre per annum for each acre of "Cane Lands", and at the rate of Five Dollars (\$5.00) per acre per annum for each acre of "Potential Cane Lands", which may be required, taken or condemned for road or other public purposes, and the Lessors shall refund to the Lessee the unearned portion, if any, of the semi-annual installment of the rent which shall have been paid in advance.

#### **B. PERCENTAGE RENTAL:**

The percentage rent for the first half-year and for each calendar year thereafter of the term of this lease for the lands hereby demised shall be determined by ascertaining the sum, in cash, of the following:

1. Five per centum (5%) of the gross value of the ninety-six degree (96°) centrifugal raw sugar or its equivalent produced during said half-year and each calendar year thereafter from cane grown on the lands hereby demised, valued at the full

New York market price, Hawaiian basis, of ninety-six degree (96°) centrifugal raw sugar (at present officially reported from time to time by the Hawaiian Sugar Planters' Association, and in case such official reports are discontinued, such other base price as may be mutually agreed upon or as may be determined by means of arbitration as is hereinafter provided) or its equivalent averaged for each day, including Sundays and holidays, for the period of said half-year and each calendar year thereafter, without any deduction, to which shall be added any bounties, benefit payments or refunds received by the Lessee on account of sugar produced during said half-year and each calendar year thereafter in addition to the amount received by the Lessee on account of the sale of sugar;

2. Five per centum (5%) of the gross proceeds, without any deduction, received by the Lessee from the sale of each form of by-product of sugar or sugar cane produced during the term of this lease by the Lessee from cane grown on the lands hereby demised during said half year and each calendar year thereafter;

3. Five per centum (5%) of the gross proceeds, without any deduction, received by the Lessee from the sale of products and by-products of any kind, other than of sugar or sugar cane, produced or derived from the lands hereby demised during said half-year and each calendar year thereafter;

The amount of the percentage rent payable for the lands hereby demised shall be the amount, if any, by which percentage rent for the said lands

for said half-year and each calendar year thereafter exceeds the said minimum rent for the said lands for said half-year and each calendar year thereafter, and such amounts shall be paid by the Lessee to the Lessors within thirty (30) days after the end of said half-year and each calendar year thereafter; provided, however, that the Lessee may estimate the amount of rent due in case final figures are not available within said thirty days; such estimated amounts and rent paid in accordance therewith shall be subject to adjustment when final figures are obtainable.

In addition to the minimum and percentage rental hereinabove provided for, the Lessee shall Yield and Pay during the said term unto the Lessors the following rentals:

### C. BUILDING AND IMPROVEMENT RENTAL:

An annual rent of One Thousand Five Hundred Seventy-five Dollars (\$1,575.00) for the use of the building and other improvements which were standing on the demised lands on July 1, 1940, to be paid in two equal payments, each in advance on the first day of January and the first day of July in each and every year during the continuance of this lease, without any deduction, the first two of such payments to be made on the execution of these presents. In the event the demised premises or any part thereof shall be required, taken or condemned by any public authority for any public use and by reason of such taking the Lessors shall receive

compensation for buildings and improvements which were standing on the demised lands on July 1, 1940, or which shall be subsequently thereto rebuilt, reconstructed, or replaced, then the annual rent for the use of the buildings and improvements shall be decreased at the rate of six per centum (6%) of the amount of the compensation so received by the Lessors.

#### D. RENTAL ON ACCOUNT OF SUBLEASE:

The Lessee shall also pay to the Lessors one-half of all the rents reserved by it under the said ten subleases to which this lease is subject, without any deduction, semi-annually in advance, in equal installments, on the first day of January and the first day of July in each and every year during the respective terms of said subleases, the first two of such installments prorated as of July 1, 1940 to be paid on the execution of these presents; and in the event that any additional subleases of portions of the lands hereby demised shall be executed by the Lessee, the Lessee shall Yield and Pay unto the Lessors a further and additional rent amounting to one-half of the rent reserved under any such additional sublease; such further and additional rent payable on account of any such additional sublease shall begin as of the date of commencement of such additional sublease and shall be paid by the Lessee to the Lessors, without any deduction, semi-annually in advance, in equal installments, during the term of such additional sublease, the first of such payments to be made on the



first day of January or the first day of July, as the case may be, next succeeding the date of commencement of such additional sublease, and shall include any rent accrued on account of such additional sublease at the date of such first payment.

And the Lessors hereby covenant with the Lessee that, upon payment by the Lessee of the rent as aforesaid and upon observance and performance of the covenants by the Lessee hereinafter contained, and the surrender and cancelation of said Lease 5500 held by the Lessee as hereinabove mentioned, the Lessee shall peaceably hold and enjoy the premises hereby demised for the said term without hindrance or interruption by the Lessors or any other person or persons lawfully or equitably claiming by, through or under them; and without limitation upon the general right hereby granted to use the lands hereby demised for any purpose not herein specifically reserved, restricted or denied, the Lessee shall have the right upon all lands hereby demised, including Forest Reservation Lands, to prospect, dig, bore, drill and tunnel for water, and to build dams, construct pumping stations, and to dig, excavate and otherwise construct reservoirs thereon for the storage of water, and to dig, lay, bore and construct ditches, pipe lines, water courses, tunnels and flumes thereon for conducting or leading water to the dams and reservoirs;

And the Lessee hereby covenants with the Lessors as follows:

That it (the Lessee) will pay the said rent in



lawful currency of the United States at the office of the Lessors in Honolulu, in manner aforesaid, without any notice or demand;

That it will also pay, when and as the same become due and payable, all taxes, rates, assessments, impositions, duties, charges and other outgoings of every description to which the demised premises or the Lessors or Lessee in respect thereof are now, or may during the said term become liable, and whether the same taxes, rates, assessments, impositions, duties, charges and other outgoings are or shall be assessed to or be payable or dischargeable by law by either the Lessors or Lessee, including all assessments or charges for any permanent benefit or improvement of the premises hereby demised or any part thereof, made under any betterment law or otherwise, or any assessments or charges for sewerage or street or sidewalk improvement or municipal or other charges which may be legally imposed upon the said premises, or to which the said premises or any part thereof or the Lessors or Lessee in respect thereof are now or may during the said term become liable; provided, however, that if any such assessments or charges shall be payable or may be paid in installments, the Lessee may elect to pay the same by installments and shall be required to pay only those installments which may become due and payable during the term of this lease;

That it will, at its own expense, during the whole of the said term, make, build, maintain and repair all fences, sewers, drains and roads which

may be required by law to be made, built, maintained and repaired upon or in connection with or for the use of the said premises or any part thereof; and also build all fences which, in the judgment of the Lessors, may be necessary to protect the reversion in any manner, and such also as may be necessary to prevent cattle, horses, and other grazing animals from straying from the lands hereby demised onto adjoining lands;

That it will, at its own expense, during the whole of the said term, well and substantially repair, maintain, amend and keep all buildings, reservoirs, dams, ditches, tunnels, flumes, water courses, wells and other improvements and boundary monuments now or hereafter built, made or constructed on the lands hereby demised and all necessary reparations and amendments whatsoever in good order and condition (excepting, however, such improvements and buildings as are of no value whatsoever to the interest of the Lessors and such as have been destroyed or irrevocably damaged by Act of God or the public enemy); and also, at its own expense, during the whole of said term, rebuild any and all buildings that may be destroyed by fire within a reasonable time after such destruction, unless any building so destroyed was of no value to the interest of the Lessors;

That it will permit the Lessors and their agents, at all seasonable times during the said term, to enter the demised premises and examine the state of repair and condition thereof and will repair and make good all defects of which notice shall

have been given by the Lessors or their agents with prompt expedition after the receipt of such notice;

That it will during the whole of the said term keep the demised premises in a strictly clean and sanitary condition and observe and perform all the laws, ordinances, rules and regulations relating to health and sanitation for the time being applicable in the premises, and will indemnify the Lessors and the estate and effects of the said Bernice P. Bishop, deceased, against all actions, suits, damages and claims by whomsoever brought or made by reason of the nonobservance or nonperformance of such laws, ordinances, rules and regulations or of this covenant;

That it will plant and complete prior to January 1, 1956 a barrier-forest zone of a width to be determined by mutual agreement and varying with the terrain, using trees and methods of planting satisfactory to the Lessors within and along the makai boundary of the Forest Reservation and will thereafter care for the trees and where necessary to secure a full stand, will replant where trees shall die or be destroyed; and will not cut down, fell or injure, or suffer to be cut down, felled or injured, such trees within the aforesaid barrier-forest except in making improvement thinnings;

That it will plant and complete the planting prior to January 1, 1956, of timber trees of commercial value of species and also in a manner satisfactory to the Lessors on all areas suitable to timber trees below the Forest Reservation which

are not suitable to other crops and which are reasonably accessible for such purposes, such areas to be determined by mutual agreement; and will thereafter care for the trees and where necessary to secure a full stand will replant where trees shall die or be destroyed; and will not cut down, fell or injure, or suffer to be cut down, felled or injured, any trees or saplings now or hereafter growing upon the lands hereby demised, without written permission from the Lessors except in making improvement thinnings and in preparing land for intensive cultivation, the intent of this covenant being to provide for a future supply of mature timber and in making improvement thinnings to furnish the Lessee with fuel, posts, poles, timber and other forest products;

That, except as hereinbefore expressly provided, the Lessee will not use the Forest Reservation Lands herein demised as Parcels "K", "L" and "M" for any other purpose than as Forest Reservation, and will at all times during the said term administer the same in cooperation with Forestry authorities of the Territory of Hawaii for the time being according to the improved methods adapted to a water conserving forest;

That it will, at all times during the said term, foster and encourage the natural reforestation of the Forest Reservation Lands hereby demised, and in prosecuting any work of developing water thereon and of diverting such water therefrom will take all reasonable and needful precautions to prevent unnecessary injury to the natural or planted forest growth;



That it will, at all times during the said term, take all reasonable precautions to keep cattle, horses and other grazing animals out of the Forest Reservation Lands and to prevent forest fires occurring thereon, and in case such fires shall occur will use all reasonable means at its command or under its control in having such fires speedily extinguished;

That, whenever requested by the Lessors so to do, the Lessee will, within six (6) months from the date of such request, at its own charge and expense, make and thereafter maintain during the whole of the said term such fencing as the Lessors may deem necessary to protect the Forest Reservation Lands hereby demised from the intrusion of cattle, horses and other grazing animals;

That it will from time to time and at least once each year during the said term, make a careful inspection of the Forest Reservation Lands hereby demised, and will during the month of January in each year (beginning 1942) submit to the Lessors a written report (in duplicate) of the results of such inspection, stating whether or not any animals detrimental to the forest cover or forest lands, or evidence thereof, or any other damage to or improper use of said forest cover or forest lands, were observed, and reporting on the general condition of the forest cover and the state of repair and condition of any fences erected for the protection of the Forest Reservation Lands;

That it will, in connection with any water investigation, development, construction, extension



and operation on the demised lands hereinabove authorized, furnish to the Lessors from time to time, and not less frequently than once each year during the term of this lease, a full and complete report and statement (in duplicate) of all work done, together with copies of all reports, surveys, maps, plans and other records secured in connection with such work; and will also keep, in a manner satisfactory to the Lessors, complete records of the quantity of water developed, if any, and will furnish copies of such records to the Lessors not less frequently than once in each year of the term of this lease, and, in the event that ~~the~~ Lessee shall develop water on lands not herein demised in such a manner that the flow of water therefrom becomes mixed with the water developed on the demised lands, will install and operate adequate water-measuring equipment and will make, keep and furnish the Lessors sufficient gaugings and records accurately to determine the quantity of water developed on the lands hereby demised;

That it will also, as soon as is reasonably practicable after the end of each calendar year during the term of this lease, furnish the Lessors a full and complete written report (in duplicate) which shall show (1) the acreage of cane harvested during such year on the demised premises segregated as to plantation fields and specifying the respective tonnages of cane and raw sugar, and crop cycles in months, for each of such fields, together with a list of areas by fields planned to be harvested during the following calendar year; (2) the

total tonnage of raw sugar produced during the preceding calendar year by the Lessee from cane grown on all land controlled by the Lessee; and (3) the quantities of each form of by-product of sugar or sugar cane produced during the preceding calendar year by the Lessee from cane grown on the demised premises, together with the quantities sold, amounts of gross proceeds received, the year during which such by-products were produced and the quantities remaining unsold at the close of such preceding year;

That it will also, as soon as is reasonably practicable after the end of each calendar year during the term of this lease, furnish the Lessors a full and complete written report (in duplicate) which shall show the quantities of each form of product and by-product, other than sugar and by-products of sugar or sugar cane, produced on the demised premises during the term of this lease, and which were sold during such calendar year, together with the amounts of gross proceeds received from the sale of each such other products;

That in the event that any part or parts of the demised lands shall at any time or times during the term of this lease be sublet by the Lessee to others, the Lessee will, as soon as is reasonably practicable after the end of each calendar year during the continuance of any such sublease, furnish the Lessors with a full and complete written report (in duplicate) which shall show the location and area of such parcel of land so sub-let, together with the term and rent reserved;

That the Lessee will, at all times during the usual office hours, permit the Lessors or their authorized agents and employees to have free access to all of its books of account, contracts and papers relative to the business carried on by it in respect of the premises hereby demised in so far as such books of account, contracts and papers shall pertain directly to the determination of the amount of gross proceeds hereinabove mentioned and to examine the same and make copies thereof or any part thereof, and generally to take and use such reasonable means as the Lessors shall deem fit for ascertaining that the accounts furnished by the Lessee are full and accurate and that the Lessee is otherwise faithfully carrying out the covenants herein contained and on its part to be observed and performed; and that it will furnish the Lessors henceforth with copies of the detailed annual reports for each year which are submitted by the Lessee to its stockholders;

That it will not make or suffer any strip or waste or unlawful, improper or offensive use of the premises demised herein, nor, without the consent in writing of the Lessors, mortgage or assign this lease, nor sublet or part with the possession of the whole or any part of the said demised premises;

That in case any water shall be developed or obtained by digging, boring, drilling, or tunneling on the demised premises, it will lead or conduct such water onto the cultivated areas, and use the same in connection with the operation of the

Lessee's business, including the irrigation of sugar cane or other crops, the development of power, the watering of live stock, or for domestic use, and none of such water shall be used on any adjacent land or sold to others before first being brought upon the agricultural lands hereby demised;

That in the use of the demised premises for the planting and cultivating of sugar cane, the Lessee will follow such use in accordance with the standards of good husbandry and approved practices then prevailing in the sugar industry in the Territory of Hawaii, and in the use of the demised premises for any other purpose whatsoever, the Lessee will follow the best of generally approved methods, and in pursuance of these provisions and in the exercise of such use the Lessee shall, by proper construction and use of drainage ditches and otherwise, take all reasonable precautions to prevent or arrest loss of soil by erosion, to the end that the rent payable under this lease shall be as large as might reasonably be expected; and will continue to do so during the continuance of this lease, with all reasonable skill, care, prudence and diligence, so long as it can be done with reasonable profit to the Lessee; it being understood, however, that in no event, except as herein expressly provided, shall this covenant be construed to diminish the minimum rent as hereinbefore specified;

That, in the event the Lessee is required to discontinue or temporarily curtail cane cultivation on land controlled by it, due to Governmental restric-



tions or in order that the Lessee may receive benefits from any general crop reduction program initiated by the Government or by an association of growers, it will not discontinue nor temporarily curtail the cultivation of cane on the demised premises in a greater ratio to the required total curtailment than the ratio the cane area cultivated on the demised premises bears to the total cane area cultivated by the Lessee;

That the Lessee will not, at any time during the said term, on behalf of either itself or others, acquire by purchase or exchange the title in or to any of the kuleanas or other fee simple holdings within the boundaries of the said lands of North Halawa, Ili of Kaonohi, Ili of Kumuulu, Ili of Poupouwela, and Waiawa, without first notifying the Lessors in writing of its intention so to do and giving them (the Lessors) the first opportunity of acquiring the title in such holdings, provided, however, that in case the Lessors shall elect to acquire the title in such holdings, and do acquire the same, the Lessee shall thereupon be offered the first opportunity of leasing the same at a rent which shall net the Lessors a return of six per centum (6) on the cost of the holdings thus acquired, for a period of years co-terminous with this lease and upon similar conditions;

That, in the event the Lessors shall bring and sustain an action against the Lessee for breach of any covenant or condition herein contained or for the recovery of possession of the demised premises, the Lessee will pay to the Lessors all costs and



expenses incurred by them in such action, including a reasonable attorney's fee;

That it will not permit or suffer the said premises or any part thereof to be used for or in connection with the manufacture or sale of ale, beer, wine, spirits or other alcoholic liquors; and

That at the end of said term or other sooner determination of this lease, the Lessee will peaceably deliver up to the Lessors possession of the lands hereby demised, together with all erections and improvements upon or belonging to the same, by whomsoever made, in good repair, order and condition, except such as are of no value to the interest of the Lessors and such as have been destroyed or irrevocably damaged by Act of God or the public enemy.

It Is Mutually Understood and Agreed by the parties hereto as follows:

(a) That in the event the demised premises or any part thereof shall be required, taken or condemned for any public use, then, in every such case, the estate and interest of the Lessee in the part of the premises taken shall at once cease and determine, and the Lessee shall not by reason of such taking be entitled to any claim either against the Lessors or others for compensation or indemnity of the taking of any land or water, or any buildings or other improvements as shall have been made prior to July 1, 1940, and all compensation payable or to be paid by reason thereof shall be payable to and be the sole property of the Lessors, and the Lessee shall have no interest in or claim

to such compensation or any part thereof whatsoever, provided, however, and it is hereby agreed that such compensation as shall represent the value of any growing crops shall be payable to and be the sole property of the Lessee; and such compensation as shall represent the value of any buildings or other improvements made or constructed after July 1, 1940, shall be divided between the Lessors and the Lessee as their interests shall appear, dependent upon the then unexpired term of the lease; and it is further agreed that if such taking shall so affect the remaining premises held by the Lessee under this lease, or so affect the operation of the Lessee's remaining lands and tenancies, or the business being conducted thereon as to cause substantial damage to the Lessee, then and in that event the Lessee shall have the right to present and pursue its claim for damages and be compensated therefor so long as such action or the payment of such damages shall not affect nor diminish the compensation payable to the Lessors as stipulated hereinabove. It being understood that the provisions of this paragraph shall apply to the proceedings in eminent domain brought by the United States of America to take as of September 5, 1940, Parcel "A-2" (Halawa) of the lands hereby demised containing a net area of 29.93 acres, classified herein as 13.74 acres "Cane Lands" and 16.19 acres "Miscellaneous Lands". By virtue of condemnation classification this paragraph is inoperative. Condemnation classification is given as 17.46 acre cane land and 12.47 acre miscellaneous land;

(b) That the term "by-product of sugar or sugar cane" as used herein shall mean any product which remains over in the cultivation of sugar cane or the manufacture of sugar, and which possesses an actual or potential value of its own in the form in which it remains over; and the term "product other than sugar cane or sugar" as used herein shall mean any product which is produced on the demised premises other than water and sugar cane and which possesses an actual or potential value of its own; and that the Lessee shall not sell any product derived from the processing in whole or in part of a by-product of sugar or sugar cane, nor any product or by-product derived from the processing in whole or in part of a product other than sugar cane or sugar, without first obtaining from the Lessors written permission so to do, and agreeing with the Lessors upon the method by which the percentage rental with respect thereto shall be calculated;

(c) That all matters of disagreement that may arise under this lease, which cannot be adjusted by the parties hereto to their mutual satisfaction, including any matter herein left to future mutual agreement, shall be settled by arbitration and at the desire of either party shall be submitted to and determined by three indifferent arbitrators, one to be appointed by each of the parties hereto, and either party may give to the other written notice of a desire to have an arbitration of the matter or matters in dispute and name therein one of the arbitrators, whereupon the other party shall

within ten (10) days after the receipt of such notice, name another arbitrator, and, in case of failure so to do, the party who has named an arbitrator shall have the right to apply to a Circuit Judge of the Circuit Court of the First Circuit of the Territory of Hawaii, requesting him to appoint an arbitrator to represent the party so failing to appoint an arbitrator, and the two arbitrators thus appointed (in either manner) shall select and appoint a third arbitrator, and in the event that the two arbitrators so appointed shall, within ten (10) days after the naming of the second arbitrator fail to appoint the third arbitrator, either party shall have the right to apply to such judge to appoint such third arbitrator, and the three arbitrators so appointed shall thereupon proceed to determine the matter or matters in question, and the decision of any two of them (including the disposition of the costs of the arbitration) shall be final, conclusive and binding upon both parties, and judgment may be entered upon such award by the Circuit Court of the First Circuit unless the same shall be vacated, modified or corrected as provided in Chapter 116, Revised Laws of Hawaii 1935, or as the same may be amended or reenacted from time to time, the provisions of which said statute shall apply hereto as fully as though incorporated herein;

(d) That in case the Lessors or the Lessee shall be ousted of the possession of any portion or portions of the said "Cane Lands", "Potential Cane Lands" or "Miscellaneous Lands" by reason of



the successful assertion of a paramount title, the minimum rent shall be decreased for the remainder of the term at the rate of Fifteen Dollars (\$15.00) per acre per annum for "Cane Lands" and at the rate of Five Dollars (\$5.00) per acre per annum for "Potential Cane Lands" of the possession of which such ouster shall have occurred.

Provided, However, and this demise is upon this condition, that if the Lessee shall fail to pay the said rent or any part thereof within thirty (30) days after the same becomes due, whether the same shall or shall not have been legally demanded, or shall become bankrupt, or shall fail to observe or perform faithfully any of the covenants herein contained and on the part of the Lessee to be observed and performed, or shall abandon the demised premises, the Lessors may at once reenter the demised premises or any part thereof in the name of the whole and, upon or without such entry, at their option terminate this lease without service of legal process and without prejudice to any other remedy or right of action for arrears of rent or for any preceding or other breach of contract, if, after written notice of any such default or breach of contract shall have been given by the Lessors to the Lessee, the Lessee shall have failed within thirty (30) days after the receipt of such written notice to remedy such default or breach of contract or justify its failure so to do to the satisfaction of the Lessors.

And It Is Hereby Expressly Agreed and Declared that the acceptance of rent by the Lessors



shall not be deemed to be a waiver by them of any breach by the Lessee of any covenant herein contained, or of the Lessors' right to terminate this lease for breach of covenant; that the term "premises" wherever it appears herein includes and shall be deemed or taken to include (except where such meaning would be clearly repugnant to the context) all buildings and improvements now or at any time hereafter built on the lands hereby demised and all water arising thereon or appurtenant thereto, and that the term "Lessors" in these presents shall include the Lessors, their successors in trust and assigns, and also that the term "Lessee" shall include the Lessee, its successors and permitted assigns.

In Witness Whereof the Lessors as such Trustees as aforesaid have set their hands, and the Lessee has caused its name and corporate seal to be set by its attorney-in-fact, hereunto and to two other instruments of the same date and tenor, this 28th day of January, 1941.

/s/ EDWIN P. MURRAY,

/s/ GEO. M. COLLINS,

/s/ J. K. CLARKE,

Trustees under the Will and of the Estate of  
Bernice P. Bishop, Deceased.

(Corporate Seal.)

HONOLULU PLANTATION  
COMPANY,

By /s/ R. A. COOKE,

Its Attorney-in-Fact.

(Duly Acknowledged.)

Entered of Record this 19th day of February,

A. D., 1941 at 9:15 o'clock a.m. and compared.  
Mark N. Huckestein, Registrar of Conveyances.

Received for Registration Feb. 20, 1941. Oliver  
R. Aiu, Assistant Registrar, Land Court.

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Civil 514 etc.

HONOLULU PLANTATION EXHIBIT 9-I

(Admitted in Evidence 12-3-46)

Oahu Railway and Land Company  
Honolulu, Hawaii

January 1, 1943.

Honolulu Plantation Company  
C. Brewer & Company Limited, Agents  
P. O. Box 3470  
Honolulu, T. H.

Gentlemen:

Please be advised that we have conveyed to a subsidiary, The Hawaiian Land & Improvement Company Limited, the premises leased to your Company under date of July 24, 1936. Together with such small areas as have been added thereto.

The lease above referred to has been assigned to Hawaiian Land and Improvement Company Limited as July 1, 1942.

With this we are enclosing the usual rental bill covering the first six month period.

Very truly yours,

/s/ A. W. VAN VALKENBURG,  
Secretary.

## LEASE

This indenture, made this 24th day of July, 1936, by and between Oahu Railway and Land Company, a Hawaiian corporation, hereinafter called the "Lessor", of the first part, and Honolulu Plantation Company, a California corporation carrying on business in the Territory of Hawaii, hereinafter called the "Lessee", of the second part,

Witnesseth: That the Lessor, in consideration of the rent hereinafter reserved, and of the covenants herein contained and on the part of the Lessee to be observed and performed, does hereby demise and lease unto the Lessee:

All those two certain tracts or parcels of land situate at Waimano and Manana, District of Ewa, City and County of Honolulu, Territory of Hawaii, being portions of R. P. 2060 L.C.A. 11029, Apana 3, to John Stevenson, and Grant 2060 to Joseph Raymond and Louis Bernard, described as follows:

## LOT I.

Being portions of R. P. 2060 L.C.A. 11029, Apana 3, to John Stevenson, and Grant 2060 to Joseph Raymond and Louis Bernard, lying on the mauka or North side of Kamehameha Highway, described as follows:

Beginning at a 1" pipe in concrete at the Southeast corner of this lot, on the boundary of the lands of Waiau and Waimano, on the North side of present Kamehameha Highway, the coordinates of said point of beginning referred to Government Survey

Triangulation Station "Ewa Church" being 140.53 feet South and 5759.55 feet East and running by true azimuth:

1.  $110^{\circ} 28' 30''$ —444.50 ft. along fence along present Kamehameha Highway;
2.  $114^{\circ} 17'$ —704.40 ft. along same;
3.  $104^{\circ} 30'$ —241.40 ft. along same;
4.  $105^{\circ} 34' 30''$ —496.12 ft. along same to a point where New Kamehameha Highway boundary meets the present Highway;
5.  $110^{\circ} 19' 30''$ —180.64 ft. along North side of New Kamehameha Highway;
6.  $202^{\circ} 00'$ —417.67 ft. along portion of L.C.A. 11029, Apana 3 to J. Stevenson, now owned by Ewa Bottling Works, Ltd.;
7.  $112^{\circ} 00'$ —125.00 ft. along same;
8.  $22^{\circ} 00'$ —84.00 ft. along same;
9.  $112^{\circ} 00'$ —275.00 ft. along portion of Grant 2060 to Joseph Raymond and Louis Bernard, and along Land Patent 6442 to Lehua Avenue extension;
10.  $202^{\circ} 00'$ —164.00 ft. along Lehua Avenue extension;
11.  $112^{\circ} 00'$ —20.00 ft. along same at an angle to a point 25 feet from the center line of Waimano Home Road as described in a certain indenture made on the 4th day of May, 1927 by and between O. R. and L. Co. and the City and County of Honolulu and recorded in Liber No. 881, pages 216-218 of Hawaiian Registry of Conveyances;

Thence following along the Eastern side of said

Waimano Home Road Right-of-way, the next 8 courses run as follows:

12.  $202^{\circ} 00'$ —7041.04 feet;
13.  $197^{\circ} 15'$ —327.86 feet;
14.  $233^{\circ} 30'$ —131.78 feet;
15.  $242^{\circ} 50'$ —540.53 feet;
16.  $231^{\circ} 05'$ —249.33 feet;
17.  $245^{\circ} 50'$ —292.37 feet;
18.  $274^{\circ} 30'$ —393.30 feet;
19.  $289^{\circ} 00' 16''$ —358.08 feet to a point on the boundary of Government land at Waimano, known as Waimano Home site;
20.  $337^{\circ} 55'$ —278.54 feet along said boundary;
21.  $333^{\circ} 21' 20''$ —2843.70 feet along same to a “†” marked on a large boulder, located on South-east edge of Waimano Stream;
22.  $264^{\circ} 55'$ —179.30 feet along same to a “†” on square set stone;
23.  $26^{\circ} 37' 30''$ —1433.90 feet along Bishop Estate Land, Ili of Kumuulu, being L.C.A. 7713, R.P. 4475, Apana 35 to J. Stevenson, to a pipe in concrete; from which pipe a certain Triangulation Station known as ‘Waiau’ located on the bank of reservoir bears by true azimuth  $318^{\circ} 31'$  and 269.75 feet.
24.  $38^{\circ} 06'$ —1650.00 feet along same to a pipe;
25.  $37^{\circ} 06'$ —1716.00 feet along same to a “†” on square stone post;
26.  $45^{\circ} 06'$ —1316.90 feet along same to a “†” on square stone post;
27.  $17^{\circ} 30'$ —999.30 feet along same to the point of beginning,

Containing an area of 614.38 acres.



## LOT II.

Being a portion of Grant 2060 to Joseph Raymond and Louis Bernard, lying on the mauka or North side of Kamehameha Highway, described as follows:

Beginning at a point on the Northwest corner of this lot on the boundary of the lands of Manana and Waiawa, the coordinates of said point of beginning referred to Government Survey Triangulation Station "Ewa Church" being 7675.92 feet North and 5242.67 feet East and being also  $249^{\circ} 02'$  747.8 feet from a certain Triangulation Station, known as "Cane", located in the land of Waiawa and running by true azimuth:

1.  $21^{\circ} 43'$ —528.00 feet along the Eastern boundary of the land of Waiawa, being L.C.A. 7713, R.P. 4475, Apana 46 to Victoria Kamamalu;
2.  $33^{\circ} 59'$ —4546.00 feet along same;
3.  $08^{\circ} 14'$ —726.00 feet along same;
4.  $08^{\circ} 06'$ —1254.00 feet along same;
5.  $311^{\circ} 41'$ —787.25 feet along L.C.A. 7713, R.P. 4475, Apana 48 to Victoria Kamamalu to a point on the mauka or Northeast side of Kamehameha Highway, new alignment;
6.  $290^{\circ} 19' 30''$ —95.20 feet along said Kamehameha Highway;
7.  $202^{\circ} 00'$ —526.00 feet along portion of Grant 2060 and along Pearl City Municipal Park;
8.  $292^{\circ} 00'$ —440.00 feet along mauka boundary of said Municipal Park;

9.  $202^{\circ} 00'$ —225.00 feet along portion of Grant 2060 along an excavated area;
10.  $292^{\circ} 00'$ —70.00 feet along same to a point 25 feet from the center line of Waimano Home Road;
11.  $202^{\circ} 00'$ —6815.00 feet along the Western side of said Waimano Home Road (Right-of-way being 50 feet wide);
12.  $197^{\circ} 15'$ —250.00 feet along same;
13.  $54^{\circ} 30'$ —570 feet along edge of a steep pali, overlooking Waiawa Gulch on the Northwest;
14.  $94^{\circ} 26' 30''$ —579.15 feet along same to the point of beginning,

Containing a gross area of 221.74 acres, excepting and reserving therefrom the City and County Reservoir site, described as follows:

Beginning at a point on the Northeast corner of this lot, the coordinates of said point being 2501.80 feet North and 3418.00 feet East from a Government Survey Triangulation Station "Ewa Church", and running by true azimuth:

1.  $22^{\circ} 00'$ —101.00 feet along an irrigation ditch;
2.  $51^{\circ} 20'$ —170.00 feet along cane field;
3.  $141^{\circ} 20'$ —170.00 feet along same;
4.  $202^{\circ} 00'$ —165.95 feet along same to a road;
5.  $292^{\circ} 00'$ —231.45 feet along said road to the point of beginning,

Containing an area of 45,346 square feet or 1.04 acres more or less.

## SUMMARY

Lot I—Area .....	614.38 Acres
Lot II—Area.....	221.74 Acres
<hr/>	
Total .....	836.12 Acres
Less Exclusion .....	1.04 Acres
<hr/>	
Net Area .....	835.08 Acres

Subject also to an easement for two pipe line rights of way from the City and County Reservoir Site, one pipe line running in a Southeasterly direction to Waiamano Home Road and one running in a Southerly direction to the Municipal Park, both easements being in favor of the City and County of Honolulu, as granted by the Oahu Railway and Land Company by deed dated July 25, 1932, recorded in the office of the Registrar of Conveyances in Honolulu in Book 1174 Page 82.

Together with all the buildings and improvements thereon.

Excepting and Always Reserving out of this demise:

(a) The pole and wire lines of the Hawaiian Electric Company, Limited, as shall, at the commencement of the term of this lease, have been constructed over and across portions of the land hereby demised, together with all rights appurtenant thereto;

(b) All lands which the Lessor may require or deem necessary or desirable as rights-of-way for pole and wire lines of all kinds to be constructed and maintained by it or its assigns (either in ad-

dition to or in substitution for any existing pole and wire lines) upon, over or across the lands hereby demised from any point or points in any direction, including all reasonable right of entry upon the demised premises for the construction, repair and maintenance of the same in efficient use and condition; it being understood and agreed that the Lessor's rights in this respect will be exercised in such manner as to occasion the Lessee the least possible interference with its use of the demised premises;

(c) The right unto the Lessor, its licensees and its tenants and lessees of adjoining and neighboring lands reasonably to use, in common with the Lessee, the road beginning at West side of Wai-mano Home Road at 280 foot ditch and passing across Lot 2 hereof, makai of Lessee's reservoir to the Bishop Estate land of Waiawa and thence mauka over said last named land to the Lessor's land mauka of said Lot 2 now existing upon the lands hereby demised and land under the control of the Lessee at the date of execution hereof, it being understood that in the event the Lessee shall deem it advisable to abandon such existing road, it will at its own expense, if so requested by the Lessor, provide an equally convenient and suitable road for the reasonable use by the Lessor, its licensees and its tenants and lessees of adjoining and neighboring lands.

(d) The lands demised by this lease to the extent said lands are withdrawn by the Lessor as hereinafter mutually agreed upon;

(e) The easements and rights-of-way granted to the City and County of Honolulu by the Lessor and Lessee in that certain deed dated July 25, 1932 and recorded in the Bureau of Conveyances of the Territory of Hawaii in Book 1174, Page 82;

(f) A right-of-way and easement over the lands demised hereby, for the installation and maintenance of a pipe-line for the purpose of carrying any water which the Lessor may develop upon any of its lands including the lands demised hereby and withdrawn from the operation hereof, and the right to go upon the lands demised hereby for the purpose of constructing, inspecting, repairing and maintaining said pipe line; Provided, However, that the Lessor shall pay to the Lessee any damages to growing crops which may be occasioned by the erection or maintenance of said pipe-line and provided further that said pipe-line shall be buried at least three feet below the surface; and provided further that the lessor shall have the right to designate the location of such right-of-way and easement at the time it desires to instal said pipe-line.

To Have and To Hold the same unto the Lessee from the first day of July, 1940, for the term of twenty-five and one-half ( $25\frac{1}{2}$ ) years thence next ensuing, subject to said exceptions and reservations, the Lessee yielding and paying therefor yearly and every year during the said term unto the Lessor rent as follows:

A. Minimum Rental. All minimum rent shall be payable in two equal payments, each in advance



on the 1st day of January and the 1st day of July in each and every year during the continuance of this lease, without any deduction, the first of such payments to be made on the 1st day of July, 1940, and the minimum rent for the first half year and each calendar year thereafter for the land under each classification shall be at a rate determined as follows:

1. Sugar Cane Lands. The minimum rent for the land hereby demised which is classified as "Sugar Cane Lands" and which comprises 791.80 acres, including 51.28 acres, more or less, of land contributory to such cane land, such as field roads, ditches, reservoirs, railroads, stables and camp sites, shall be \$11,877.00 per annum; said minimum rent shall be decreased for the remainder of the term at the rate of Fifteen Dollars (\$15) per acre per annum for each acre of "Sugar Cane Lands" which may be required, taken or condemned for road or other public purposes or in respect to which the Lessor is unable to maintain the Lessee in peaceable possession or which may be withdrawn from this lease as hereinafter provided and the Lessor shall refund to the Lessee the unearned portion, if any, of the semi-annual installment of the rent which shall have been paid in advance;

2. Waste Lands. No minimum rent shall be paid for the land hereby demised which is classified as "Waste Lands" representing forty-three and 28/100 (43.28) acres.

B. Percentage Rental. The percentage rent for the first half year and for each calendar year

thereafter for the lands hereby demised shall be determined by ascertaining the sum, in cash, of the following:

1. Five percentum (5%) of the gross value of ninety-six degrees (96°) centrifugal raw sugar or its equivalent produced during said half year and each calendar year thereafter from cane grown on the lands hereby demised, valued at the full New York market price, Hawaiian basis, of ninety-six degrees (96°) centrifugal raw sugar (at present officially reported from time to time by the Hawaiian Sugar Planters' Association, and in case such official reports are discontinued, such other base price as may be mutually agreed upon or as may be determined by means of arbitration as is hereinafter provided) or its equivalent average for each day, including Sundays and holidays, for the period of said half year and each calendar year thereafter, without any deduction, to which shall be added any bounties, benefit payments or refunds received by the Lessee on account of sugar produced during said half year and each calendar year thereafter in addition to the amount received by the Lessee on account of the sale of sugar;

2. Five percentum (5%) of the gross proceeds, without any deduction, received by the Lessee from the sale of each form of by-product of sugar or sugar cane produced during the term of this lease by the Lessee from cane grown on the lands hereby demised during said half year and every calendar year thereafter.

3. Five percentum (5%) of the gross proceeds,

without any deduction, received by the Lessee from the sale of products and by-products of any kind, other than of sugar or sugar cane, produced or derived from the lands hereby demised during the said half year and each calendar year thereafter;

4. It is understood that in the event the Lessee shall after December 31, 1965 receive proceeds from sales of 96° centrifugal raw sugar or its equivalent or any form of by-products of sugar or sugar cane produced from cane grown on the demised premises during the term hereof or shall receive proceeds from the sale of products and by-products of any kind whatsoever other than sugar or sugar cane produced or derived from the demised premises during the term of this lease, the Lessor shall receive 5% of such gross proceeds;

The amount of the percentage rent payable for the lands hereby demised shall be the amount, if any, by which the percentage rent for the lands hereby demised for said half year and each calendar year thereafter exceeds the minimum rent for the lands hereby demised for said half year and each calendar year thereafter, and such amount shall be paid by the Lessee to the Lessor within thirty (30) days after the end of said half year and each calendar year thereafter; provided, however, that the Lessee may estimate the amount of rent due in case final figures are not available within said thirty days; such estimated amounts and rent paid in accordance therewith shall be subject to adjustment when final figures are obtainable.

And the Lessor hereby covenants with the Lessee, that upon payment by the Lessee of the rent as aforesaid and upon observance and performance of the covenants by the Lessee hereinafter contained, the Lessee shall peaceably hold and enjoy the premises hereby demised for the said term without hindrance or interruption by the Lessor or any other person or persons lawfully or equitably claiming by, through or under it;

And the Lessee hereby covenants with the Lessor as follows:

That it (the Lessee) will pay the said rent in legal tender of the United States at the office of the Lessor in Honolulu, in manner aforesaid, without any notice or demand;

That it will also pay, when and as the same become due and payable, all taxes, rates, assessments, impositions, duties, charges and other outgoings of every description to which the demised premises or the Lessor or Lessee in respect thereof are on July 1, 1940, or may during the said term become liable, and whether the said taxes, rates, assessments, impositions, duties, charges and other outgoings are or shall be assessed to or be payable or dischargeable by law by either the Lessor or Lessee, including all assessments or charges for any permanent benefit or improvement of the premises hereby demised or any part thereof, made under any betterment law or otherwise, or any assessments or charges for sewerage or street or sidewalk improvement or municipal or other charges which may be legally imposed upon the

said premises, or to which the said premises or any part thereof or the Lessor or Lessee in respect thereof are on July 1, 1940, or may during the said term become liable, Provided, However, that if any of said assessments or charges are payable in annual installments the Lessee may elect to pay the same by installments and shall only be required to pay only those installments which may become due and payable during the term of this lease.

That if any assessments or charges for any permanent benefit or improvement initiated by the Lessor are assessed against the premises herein demised or are occasioned by virtue of a subdivision initiated by the Lessor on lands which the Lessor may, under the terms of this lease, withdraw from the operation hereof from time to time, such assessment shall be paid by the Lessor.

That it will, at its own expense, during the whole of the said term, make, build, maintain and repair all fences, sewers, drains and roads which may be required by law to be made, built, maintained and repaired upon or in connection with or for the use of the said premises or any part thereof; and also build all fences which, in the judgment of the Lessor, may be necessary to protect the reversion in any manner, and also such as may be necessary to prevent cattle, horses and other grazing animals from straying from the lands hereby demised onto adjoining lands:

That it will, at its own expense, during the whole of the said term, well and substantially repair, maintain, amend and keep all buildings, reservoirs,



dams, ditches, tunnels, flumes, water-courses, wells and other improvements and boundary monuments now or hereafter built, made or constructed on the lands hereby demised and all necessary reparations and amendments whatsoever in good order and condition, (excepting however, such improvements and buildings as are of no value whatsoever to the interest of the Lessor and such as have been destroyed or irreparably damaged by act of God or the public enemy), and also, at its own expense, during the whole of said term rebuild any and all buildings that may be destroyed by fire within a reasonable time after such destruction, unless any building so destroyed was of no value to the interest of the Lessor;

That it will permit the Lessor and its agents, at all reasonable times during the said term, to enter the demised premises and examine the state of repair and condition thereof and will repair and make good all defects of which notice shall have been given by the Lessor or its agents with prompt expedition after the receipt of such notice;

That it will during the whole of said term keep the demised premises in a strictly clean and sanitary condition and observe and perform all the laws, ordinances, rules and regulations relating to health and sanitation for the time being applicable in the premises, and will indemnify the Lessor against all actions, suits, damages and claims by whomsoever brought or made by reason of the non-observance or non-performance of such laws, ordinances, rules and regulations or of this covenant;

That the Lessee will neither bore nor drill for water on the demised premises nor in any other way whatsoever endeavor to develop water thereon without first obtaining the written consent of the Lessor;

That it will also, as soon as is reasonably practicable after the end of each calendar year during the term of this lease, furnish the Lessor a full and complete written report (in duplicate) which shall show: (1) the acreage of cane harvested during such year on the demised premises segregated as to plantation fields, and specifying the respective tonnages of cane and raw sugar, the amount of body cane cut for seed, the crop cycles and the age of cane at the time of harvest, in months, for each of such fields, together with the list of areas by fields planned to be harvested during the then ensuing calendar year; (2) the total tonnage of raw sugar produced during the preceding calendar year by the Lessee from cane grown on all land controlled by the Lessee; and (3) the quantities of each form of by-product of sugar or sugar cane produced during the preceding calendar year by the Lessee from cane grown on the demised premises, together with the quantity sold, amounts of gross proceeds received, the year during which such by-products were produced and the quantities remaining unsold at the close of such preceding year;

That it will also, as soon as is reasonably practicable after the end of each calendar year during the term of this lease, furnish the Lessor a full

and complete written report (in duplicate) which shall show the quantities of each form of product and by-product, other than sugar and by-products of sugar or sugar cane, produced on the demised premises during the term of this lease, and which were sold during such calendar year, together with the amounts of gross proceeds received from the sale of each such other products, and together with the amount of such other products as remain unsold;

That the Lessee will at all times during the usual office hours, permit the Lessor or its authorized agents and employees to have free access to all of its books of account, contracts and papers relative to the business carried on by it in respect of the premises hereby demised in so far as such books of account, contracts and papers shall pertain directly to the determination of the amount of gross proceeds hereinabove mentioned and to examine the same and make copies thereof or any part thereof, and generally to take and use such reasonable means as the Lessor shall deem fit for ascertaining that the accounts furnished by the Lessee are full and accurate and that the Lessee is otherwise faithfully carrying out the covenants herein contained and on its part to be observed and performed; and that it will furnish the Lessor henceforth with copies of the detailed annual reports for each year which are submitted by the Lessee to its stockholders;

That it will not make or suffer any strip or waste or unlawful, improper or offensive use of

the premises demised hereby, nor, without the consent in writing of the Lessor, mortgage or assign this lease, nor sublet or part of the possession of the whole or any part of the said demised premises, but the Lessor shall not be required to give such consent without such readjustment in rental as it may require;

That in the use of the demised premises for the planting and cultivating of sugar cane, the Lessee will follow such use in accordance with the standards of good husbandry and approved practices then prevailing in the sugar industry in the Territory of Hawaii, and in the use of the demised premises for any other purpose whatsoever, the Lessee will follow the best of generally approved methods, and in pursuance of these provisions and in the exercise of such use the Lessee shall, by proper construction and use of drainage ditches and otherwise, take all reasonable precautions to prevent or arrest loss of soil by erosion, to the end that the rent payable under this lease shall be as large as might reasonably be expected; and will continue to do so during the continuance of this lease, with all reasonable skill, care, prudence and diligence, so long as it can be done with reasonable profit to the Lessee, it being understood, however, that in no event except as hereinbefore provided, shall this covenant be construed to diminish the minimum rent as hereinbefore provided.

That, in the event the Lessee is required to discontinue or temporarily curtail cane cultivation on land controlled by it, due to Governmental restric-



tions or in order that the Lessee may receive benefits from any general crop reduction program initiated by the Government or by an association of growers, it will not discontinue nor temporarily curtail the cultivation of cane on the demised premises in a greater ratio to the required total curtailment than the ratio the cane area cultivated on the demised premises bears to the total cane cultivated area by the Lessee;

That the Lessee will not cut sugar cane stalks, other than tops, for body cane seed purposes on the lands hereby demised in a greater ratio to the entire amount of sugar cane stalks cut for body cane seed purposes on all of the lands cultivated by the Lessee than the area of the demised premises bears to all of the lands cultivated by the Lessee;

That in the event the Lessor shall bring and sustain an action against the Lessee for breach of any covenant or condition herein contained or for the recovery of possession of the demised premises, the Lessee will pay to the Lessor all costs and expenses incurred by it in such action, including a reasonable attorney's fee;

That at the expiration of said term or sooner determination of this lease, or upon withdrawal of lands by the Lessor as hereinafter provided, it will peaceably surrender and deliver up to the Lessor possession of the lands hereby demised or withdrawn, together with all erections and improvements upon or belonging to the same by whomsoever made, in good repair, order and condition, except such as are of no value to the in-



terest of the Lessor and such as have been destroyed or irreparably damaged by an act of God or the public enemy;

It Is Mutually Understood and Agreed by the parties hereto as follows:

(a) That in the event the demised premises or any part thereof shall be required, taken or condemned for any public use, then, in every such case, the estate and interest of the Lessee in the part of the premises taken shall at once cease and determine, and the Lessee shall not by reason of such taking be entitled to any claim either against the Lessor or others for compensation or indemnity for the taking of any land or water, or any improvements as shall have been made prior to the date of the execution of this lease, and all compensation payable or to be paid by reason thereof shall be payable to and be the sole property of the Lessor, and the Lessee shall have no interest in or claim to such compensation or any part thereof whatsoever, provided, however, and it is hereby agreed that such compensation as shall represent the value of any growing crops and cane stools shall be payable to and be the sole property of the Lessee, less Lessor's percentage rental interest therein; and such compensation as shall represent the value of any improvements or buildings made or constructed after the date of the execution of this lease shall be divided between the Lessor and the Lessee as their interests shall appear, dependent upon the then unexpired term of the lease; and it is further agreed that if such taking shall

so affect the remaining premises held by the Lessee under this lease, or so affect the operation of the Lessee's remaining lands and tenancies, or the business being conducted thereon as to cause substantial damage to the Lessee, then and in that event the Lessee shall have the right to present and pursue its claim for damages and be compensated therefor so long as such action or the payment of such damages shall not affect nor diminish the compensation payable to the Lessor upon condemnation as provided for in this lease.

(b) That the term "by-product of sugar or sugar cane" as used herein shall mean any product which remains over in the cultivation of sugar cane or the manufacture of sugar, and which possesses an actual or potential value of its own in the form in which it remains over, and the term "product other than sugar cane or sugar" as used herein shall mean any product which is produced on the demised premises other than water and sugar cane and which possesses an actual or potential value of its own;

(c) That the Lessee shall not sell any product derived from the processing in whole or in part of a by-product of sugar or sugar cane, nor any product or by-product derived from the processing in whole or in part of a product or by-product other than sugar cane or sugar, without first obtaining from the Lessor written permission so to do, and agreeing with the Lessor upon the method by which the percentage rental with respect thereto shall be calculated;

(d) That the Lessor shall have the right to withdraw from the operation of this lease at such time or times as it may elect such area or areas as it in its sole discretion may select of the portion of the demised premises outlined in red on map hereto attached and made a part hereof, such withdrawals not to exceed in the aggregate a total of 200 acres, and to be progressively from the New Kamehameha Highway mauka in contiguous parcels on either or both sides of the Waimano Home road running mauka from the New Kamehameha Highway through the above mentioned portion of the demised premises and such withdrawals to consist of strips running from said Waimano Home road, (or where the red line does not follow the boundaries of Waimano Home road, from the outside of the red line which is approximately parallel to Waimano Home road) across either or both portions of the demised premises on each side of the Waimano Home road to the outside of the red line outlining said boundary as aforesaid, the mauka boundaries of said strips to be approximately parallel to Kamehameha Highway.

And the Lessor hereby covenants with the Lessee as follows:

1. That in each instance it will notify the Lessee of its intention to withdraw the land at least six (6) months prior to the date of withdrawal, such notice to be given to the Lessee at its office at Aiea or in Honolulu at the office of its agent, C. Brewer and Company, Limited, and such notice shall specifically set forth the area and description of the

land to be withdrawn; Provided, However, that in case lands are to be withdrawn for the use of constructing a reservoir for the Pearl City Water Works, said lands may be withdrawn upon giving two (2) months' notice;

2. That the Lessor will not withdraw lands for the purpose of cultivating sugar cane or pineapples or knowingly sell or lease lands so withdrawn to third persons for the purpose of cultivating sugar cane or pineapples, but nothing herein contained shall be deemed to require the Lessor to put any restrictive covenants of any nature in any deed, agreement of sale or lease covering lands withdrawn or exact any agreement as to the use of lands withdrawn by any bona fide purchaser or lessee or inquire as to the use to which any bona fide purchaser or lessee intends to put said lands.

3. That the minimum rent payable by the Lessee as hereinbefore provided shall be decreased for the remainder of the term at the rate of Fifteen Dollars (\$15.00) per acre per annum for each acre which may be withdrawn by the Lessor effective the date possession of said land is surrendered pursuant to the terms of the notice of withdrawal, and the Lessor shall refund to the Lessee the unearned portion, if any, of the semi-annual installment of rent which shall have been paid in advance.

4. That it will release the Lessee from all assessments or charges imposed under authority of law and required under the terms of this lease to be paid by the Lessee to the extent that said assessments and charges relate to the areas with-



drawn; the assessments for the year in which the withdrawal is made shall be prorated between the Lessor and Lessee as of the date possession of the land is surrendered pursuant to the terms of the notice of withdrawal;

5. That it will pay to the Lessee in legal tender of the United States, at the office of the Lessor, the following compensation:

(a) The fair and reasonable value of the growing crops and stools in the ground of the land withdrawn by the Lessor at the date possession of said withdrawn premises is surrendered to it by the Lessee pursuant to the notice of withdrawal, less however, the percentage rental interest of the Lessor therein;

(b) The fair leasehold value for the unexpired term, of all buildings and improvements upon the demised premises so withdrawn which were placed thereon by the Lessee subsequent to the date of execution hereof.

(c) That all matters of disagreement that may arise under this lease, which cannot be adjusted by the parties hereto to their mutual satisfaction, including any matter herein left to future mutual agreement, shall be settled by arbitration and at the desire of either party shall be submitted to and determined by three disinterested arbitrators, one to be appointed by each of the parties hereto, and either party may give to the other written notice of a desire to have an arbitration of the matter or matters in dispute and name therein one of the arbitrators, whereupon the other party



shall within ten (10) days after the receipt of such notice, name another arbitrator, and, in case of failure so to do, the party who has named an arbitrator shall have the right to apply to a Circuit Judge of the Circuit Court of the First Judicial Circuit of the Territory of Hawaii, requesting him to appoint an arbitrator to represent the party so failing to appoint an arbitrator, and the two arbitrators thus appointed (in either manner) shall select and appoint a third arbitrator, and in the event that the two arbitrators so appointed shall, within ten (10) days after the naming of the second arbitrator, fail to appoint the third arbitrator, either party shall have the right to apply to such judge to appoint such third arbitrator, and the three arbitrators so appointed shall thereupon proceed to determine the matter or matters in question, and the decision of any two of them (including the disposition of the costs of the arbitration) shall be final, conclusive and binding upon both parties, and judgment may be entered upon such award by the Circuit Court of the First Judicial Circuit, unless the same shall be vacated, modified or corrected as provided in Chapter 116, Revised Laws of Hawaii 1935, or as the same may be amended or re-enacted from time to time, the provisions of which said statute shall apply hereto as fully as though incorporated herein;

(f) That in case the Lessor or the Lessee shall be ousted of the possession of any portion or portions of the lands hereby demised heretofore classified as "Sugar Cane Lands" by reason of the suc-

cessful assertion of a paramount title, the minimum rent shall be decreased for the remainder of the term at the rate of Fifteen Dollars (\$15.00) per acre per annum for the said "Sugar Cane Lands" of the possession of which such ouster shall have occurred.

Provided, However, and this demise is upon this condition, that if the Lessee shall fail to pay the said rent or any part thereof within thirty (30) days after the same becomes due, whether the same shall or shall not have been legally demanded, or shall become bankrupt, or shall fail to observe or perform faithfully any of the covenants herein contained and on the part of the Lessee to be observed and performed, or shall abandon the demised premises, the Lessor may at once re-enter the demised premises or any part thereof in the name of the whole, and upon or without such entry, at its option terminate this lease without service of legal process and without prejudice to any other remedy or right of action for arrears of rent or for any preceding or other breach of contract, if, after written notice of any such default or breach of contract shall have been given by the Lessor to the Lessee the Lessee shall have failed within thirty (30) days after the receipt of such written notice to remedy such default or breach of contract or justify its failure so to do to the satisfaction of the Lessor.

And It Is Hereby Expressly Agreed and Declared that the acceptance of rent by the Lessor shall not be deemed to be a waiver by it of any

breach by the Lessee of any covenant herein contained, or of the Lessor's right to terminate this lease for breach of covenant; that the term "premises" wherever it appears herein, includes and shall be deemed or taken to include (except where such meaning would be clearly repugnant to the context) all buildings and improvements, now or at any time hereafter built on the lands hereby demised, and all water arising thereon or appurtenant thereto, and the term "Lessor" in these presents shall include the Lessor, its successors and assigns, and also that the term "Lessee" shall include the Lessee, its successors and permitted assigns.

It Is Further Understood that the term "buildings and improvements", appearing in sub-paragraph (b) of paragraph Five (5) relating to withdrawal by the Lessor of lands from the operation of this lease, appearing on page 19 of this lease, shall be deemed to include all buildings and improvements on lands so withdrawn placed thereon after the date of the execution of this lease, including specifically but without limitation to the generality of the foregoing language, lined and permanent trunk line ditches, flumes, roads, permanent railroad rails, culverts, reservoirs, syphons, fences, and dams; that the term "improvements as shall have been made prior to the date of the execution of this lease", appearing in the condemnation clause on page 15 hereof, shall be deemed to include all improvements and buildings, including specifically but without limitation to the

generality of the foregoing language, lined and permanent trunk line ditches, flumes, roads, culverts, reservoirs, fences and dams as shall have been made or constructed prior to the date of the execution hereof; that the term "improvements or buildings made or constructed after the date of the execution of this lease", appearing in said condemnation clause on page 16 of this lease, shall be deemed to include all improvements or buildings made or constructed after the date of the execution hereof, including specifically but without limitation the generality of the foregoing language, lined and permanent trunk line ditches, flumes, roads, culverts, reservoirs, fences and dams made or constructed after the date of the execution of this lease, it being understood that all compensation payable with respect to all portable railroad rails and ties and appurtenances, permanent railroad rails, and agricultural trade fixtures such as water tanks, pumps, syphons, and removable machinery made or constructed at any time shall be the sole property of the Lessee; that the term "erections and improvements upon or belonging to the same", appearing in the provision with respect to surrender of possession by the Lessee at the end of the term of this lease, or sooner determination thereof, or upon withdrawal, appearing on page 15 hereof, shall be deemed to include all erections and improvements, including specifically but without limitation to the generality of the foregoing language, lined and permanent trunk line ditches, flumes, roads, culverts, reservoirs, fences

and dams but shall not include any portable railroad rails and ties and appurtenances, permanent railroad rails and agricultural trade fixtures, such as water tanks, pumps, syphons, and removable machinery made or constructed at any time.

In Witness Whereof, the Lessor and Lessee have caused these presents to be duly executed in quadruplicate the day and year first above written.

(Corporate Seal.)

OAHU RAILWAY AND LAND  
COMPANY,

By /s/ W. F. DILLINGHAM,  
Its President.

By /s/ A. W. VAN VALKENBURG,  
Its Secretary.

(Corporate Seal.)

HONOLULU PLANTATION  
COMPANY,

By /s/ JOHN D. McKEE,  
Its President.

By /s/ C. F. JACOBSON,  
Its Secretary.

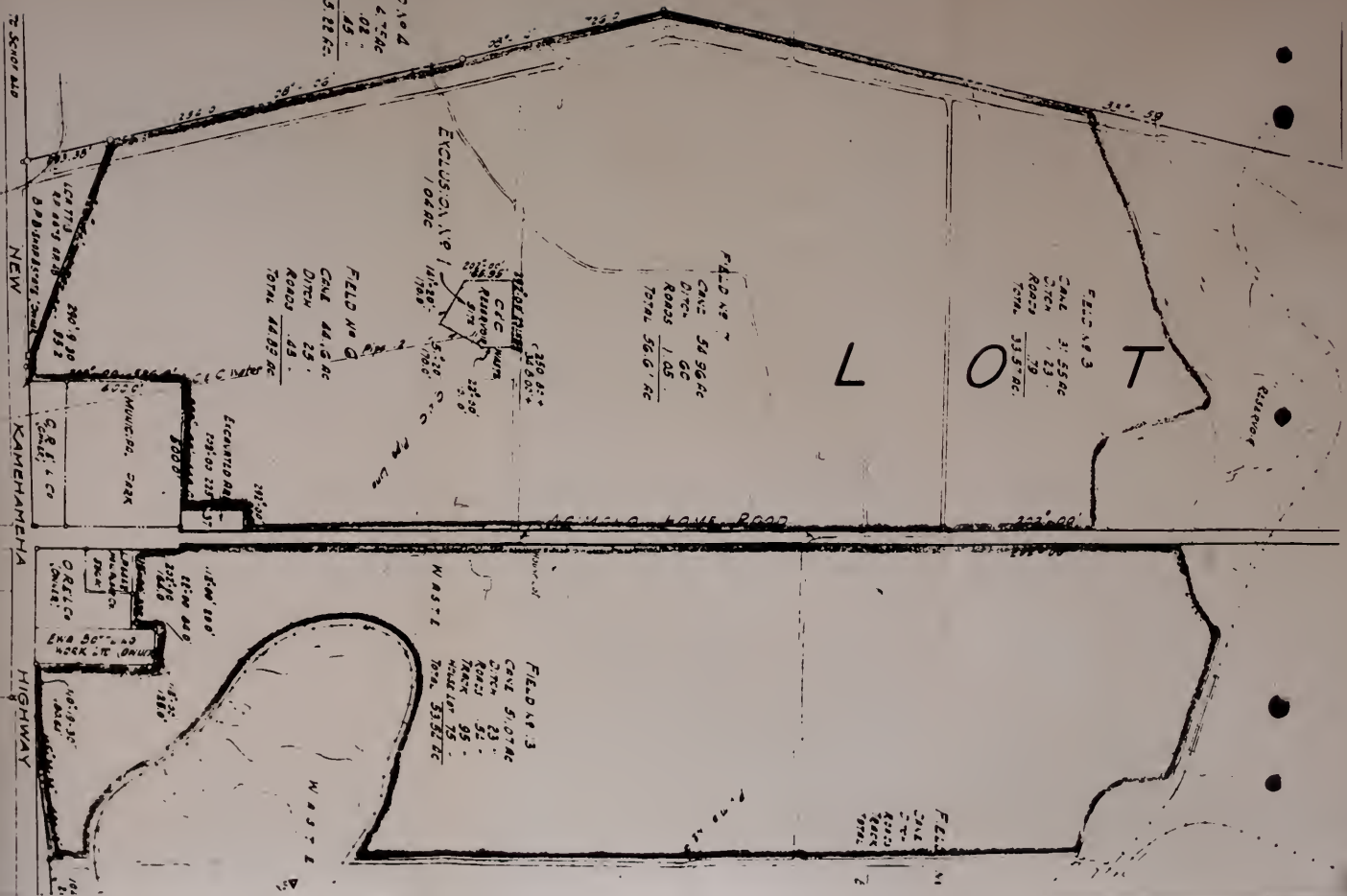
(Duly Acknowledged.)

The original of this document recorded as follows: Territory of Hawaii, Office of Bureau of Conveyances. Received for record this 14th day of Dec., 1937, and recorded in Liber 1415 on pages 73-97, and compared. Signed M. N. Huckestein, Registrar of Conveyances.





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HONOLULU PLANTATION EXHIBIT 9-J

(Admitted in Evidence 12-3-46)

Office of the  
Assistant Registrar, Land Court  
Territory of Hawaii  
(Bureau of Conveyances)

Honolulu, Hawaii, December 21, 1937

The attached instrument is a true copy of Document Number 42066-42067, received for registration in this office, Dec. 21, 1937, at 3:22 o'clock p.m., and noted on Certificate of Title Number 11500, and also recorded in the Bureau of Conveyances in Liber 1415 Page 254-283.

Attest:

(Seal)        /s/ GEORGE C. KOHA,  
Assistant Registrar, Land Court, Territory of  
Hawaii.

LEASE

This Indenture, made this 12th day of March, 1937, by and between Bruce Cartwright, Trustee under the Will and of the Estate of Emma Kaleleonalani, deceased, hereinafter called the "Lessor", of the first part, and Honolulu Plantation Company, a California corporation, carrying on business in the Territory of Hawaii, with Post Office address, care C. Brewer and Company, Limited, Box 3470, Honolulu, Hawaii, hereinafter called the "Lessee", of the second part,

Witnesseth:

That the Lessor, in consideration of the rent hereinafter reserved, and of the covenants herein contained and on th part of the Lessee to be observed and performed, and the surrender by the Lessee and the cancellation of the following leases as of December 31, 1936, to-wit:

(1) Lease—Bruce Cartwright, Trustee of the Estate of Queen Emma Kaleleonalani, deceased to Honolulu Sugar Company, dated August 2, 1898, and recorded in the office of the Registrar of Conveyances, in Honolulu, in Book 184, Page 288, which said lease was assigned by Honolulu Sugar Company to Honolulu Plantation Company under date of September 28, 1899, duly recorded in the aforesaid office in Book 202, Page 99;

(2) Lease—Bruce Cartwright, Trustee of the Estate of Queen Emma Kaleleonalani, deceased, to Honolulu Plantation Company, dated September 1, 1908, recorded in the aforesaid office in Book 298, Page 480;

held by the Lessee, does hereby demise and lease unto the Lessee: All the land situate at Halawa, District of Ewa, City and County of Honolulu, Territory of Hawaii, containing an area of 3045.353 acres, being (1) portions of the land set forth and described in Land Court Original Certificate of Title No. 11500 issued to Bruce Cartwright, Trustee under the Will and of the Estate of Emma Kaleleonalani, deceased, as set forth on a plan of said



land filed with Amended Application No. 966 in said Land Court as Lots B and C, having a net area of 1886.783 acres, and (2) all the forest land lying mauka of the land firstly described herein as Lot C, being a portion of R. P. 6717 L. C. Aw. 7712 and 8516B to M. Kekuanaoa and Kamaikui, bounded on the South by the land of Moanalua, on the North by the land of Halawa owned by the Trustees of the Estate of B. P. Bishop, deceased, on the East by the land of Heeia at the crest of the Koolau Range, and on the West by Lot C of the land firstly herein described, containing an area of 1185 acres, more or less.

Classification of net area demised:

1936 Cane (acres): 515.41.

Cane Lands—Contributory (acres): 56.50; Available for cane (acres): 20.4.

Total (acres): 592.31.

Forest Reservation Lands (acres): 1185.

Miscellaneous Lands (acres): 1268.043.

Total area (acres): 3045.353.

said land being more particularly delineated on the plan hereinbefore referred to for all areas except the Forest Reserve land.

Together with all the buildings and improvements thereon, excepting and always reserving out of this demise;

(a) The pole and wire lines of the Hawaiian Electric Company, Limited, as shall, at the commencement of the term of this lease, have been constructed over and across portions of the lands here-

by demised, together with all rights appurtenant thereto;

(b) All lands which the Lessor may require or deem necessary or desirable as rights-of-way for pole and wire lines of all kinds to be constructed and maintained by him or his assigns (either in addition to or in substitution for any existing pole and wire lines) upon, over or across the lands hereby demised from any point or points in any direction, including all reasonable right of entry upon the demised premises for the construction, repair and maintenance of the same in efficient use and condition; it being understood and agreed that the Lessor's rights in this respect will be exercised in such manner as to occasion the Lessee the least possible interference with its use of the demised premises;

(c) The right unto the Lessor reasonably to use, in common with the Lessee, such roads and trails as may exist upon the lands hereby demised;

And subject to that certain agreement entered into by the Lessor with the Board of Agriculture and Forestry of the Territory of Hawaii surrendering to the care, custody and control of said Board for forestry purposes only, the land hereby demised lying within the Forest Reserve, as described on page 2 hereof under paragraph (2) having an area of 1185 acres more or less and which agreement has a termination date of August 13, 1939.

To have and to hold the same unto the Lessee from the first day of January, 1937, for the term of twenty-nine (29) years thence next ensuing, the Lessee yielding and paying therefore yearly and

every year during the said term unto the Lessor rent as follows:

(1) During the first three and one-half ( $3\frac{1}{2}$ ) years of said term rental equivalent to and in the same amount reserved and payable to the Lessor under the aforesaid leases of the lands hereby demised and which are surrendered and cancelled as of December 31, 1936.

(2) During the remaining twenty-five and one-half ( $25\frac{1}{2}$ ) years rent as follows:

#### A. MINIMUM RENTAL

All annual minimum rent shall be payable in two equal payments, each in advance on the first day of January and the first day of July in each and every year during the continuance of this lease, without any deduction, and the minimum rent for the first one-half year and the annual minimum rent for each calendar year thereafter for the land under each classification shall be as follows:

#### I. CANE LANDS

The minimum rent for the land hereby demised which is classified as "Cane Lands" and which comprises five hundred ninety-two and thirty-one hundredths ( $592.31$ ) acres, including five hundred fifteen and forty-one hundredths ( $515.41$ ) acres of land under cane cultivation during 1936, fifty-six and fifty hundredths ( $56.50$ ) acres of land contributory to such cane land, such as field roads, ditches, reservoirs, railroads, stables, and camp sites, and twenty and forty hundredths ( $20.40$ ) acres of land

immediately mauka of the 1936 cane lands which is now available for planting shall be Eight Thousand Eight Hundred Eighty-four and 65/100 Dollars (\$8,884.65) per annum, it being understood that the minimum rent for the period from July 1, 1940 to December 31, 1940 shall be Four Thousand Four Hundred Forty-two and 33/100 Dollars (\$4,442.33) payable in advance on July 1, 1940 and the first installment of the annual minimum rental herein provided shall be payable in advance on January 1, 1941. Said minimum rent shall be decreased for the remainder of the term at the rate of Fifteen Dollars (\$15.00) per acre per annum for each acre of "Cane Lands" which may be required, taken or condemned for road or other public purposes or in respect of which the Lessor is unable to maintain the Lessee in peaceable possession, and the Lessor shall refund to the Lessee the unearned portion, if any, of the semi-annual installment of the rent which shall have been paid in advance.

## II. FOREST RESERVATION LANDS

No minimum rent shall be paid for the land hereby demised which is classified as "Forest Reservation Lands", comprising One Thousand One Hundred Eighty-five (1185) acres.

## III. MISCELLANEOUS LANDS

The minimum rent for the land hereby demised which is classified as "Miscellaneous Lands", comprising twelve hundred sixty-eight and forty-three

thousandths (1268.043) acres, shall be at such rate per acre per annum for each acre thereof used for the growing of sugar cane as shall be determined by the Lessor from time to time, and shall in each instance begin when the planting of sugar cane thereon shall be commenced and shall cease upon the rental due date next succeeding the date on which cultivation thereof shall have ceased.

## B. PERCENTAGE RENTAL

The percentage rent for the first one-half year and for each calendar year thereafter for the land under each classification shall be determined by ascertaining the sum, in cash, of the following:

1. Five per centum (5%) of the gross value of the ninety-six degree (96°) centrifugal raw sugar or its equivalent produced during said one-half year and each calendar year thereafter from cane grown on the lands under each classification, valued at the full New York market price, Hawaiian basis, of ninety-six degrees (96°) centrifugal raw sugar (at present officially reported from time to time by the Hawaiian Sugar Planters' Association, and in case such official reports are discontinued, such other base price as may be mutually agreed upon or as may be determined by means of arbitration as is hereinafter provided) or its equivalent averaged for each day, including Sundays and holidays, for the period of said one-half year and each calendar year thereafter, without any deduction, to which shall be added any bounties, benefit payment or refunds received by the Lessee on account of sugar



produced during said one-half year and each calendar year thereafter in addition to the amount received by the Lessee on account of the sale of sugar;

2. Five per centum (5%) of the gross proceeds, without any deduction, received by the Lessee from the sale of each form of by-product of sugar or sugar cane produced from cane grown on the lands hereby demised during said one-half year and each calendar year thereafter;

3. Five per centum (5%) of the gross proceeds, without any deduction, received by the Lessee from the sale of products and by-products of any kind, other than sugar or sugar cane, or by-products of sugar or sugar cane produced or derived from the lands hereby demised during said one-half year and each calendar year thereafter;

It is understood that in the event the Lessee shall after December 31, 1965 produce 96° centrifugal raw sugar or its equivalent from cane grown on the lands under each classification during the term hereof, or receive proceeds from the sale of any form of by-products of sugar or sugar cane produced from cane grown on the demised premises during the term hereof or shall receive proceeds from the sale of products or by-products of any kind whatsoever other than sugar or sugar cane produced or derived from the demised premises during the term of this lease, the Lessor shall receive 5% of the gross value of such 96° centrifugal raw sugar or its equivalent, determined as hereinabove provided, or 5% of such gross proceeds as the case may be;

The amount of the percentage rent payable for the land under each classification shall be the amount, if any, by which the percentage rent for the land under each classification for said one-half year and each calendar year thereafter exceeds the minimum rent for the land under each such classification for said one-half year and each calendar year thereafter, and such amounts shall be paid by the Lessee to the Lessor within thirty (30) days after the end of said one-half year and each calendar year thereafter; provided, however, that the Lessee may estimate the amount of rent due in case final figures are not available within said thirty days; such estimated amounts and rent paid in accordance therewith shall be subject to adjustment when final figures are obtainable.

In addition to the minimum and percentage rental hereinabove provided for, the Lessee shall yield and pay yearly and every year during the said term unto the Lessor the following rentals:

### C. BUILDING AND IMPROVEMENT RENTAL

An annual rent of One Hundred Dollars (\$100.) for the use of the buildings and other improvements which were on the demised premises on January 1, 1937, to be paid in two equal payments, each in advance on the first day of July and the first day of January in each and every year during the continuance of this lease, after July 1, 1940, without any deduction, the first of such payments to be made on the first day of July, 1940. In the event

the demised premises or any part thereof shall be required, taken or condemned by any public authority for any public use and by reason of such taking the Lessor shall receive compensation for buildings and improvements which were on the demised premises on January 1, 1937 or which shall have been subsequently thereto rebuilt, reconstructed, or replaced, then the annual rent for the use of the buildings and improvements shall be decreased at the rate of six per centum (6%) of the amount of the compensation so received by the Lessor, but in the event the sum so ascertained exceeds \$100., the Lessee shall not be entitled to any credit whatsoever for such excess.

And the Lessor hereby covenants with the Lessee that, upon payment by the Lessee of the rent as aforesaid and upon observance and performance of the covenants by the Lessee hereinafter contained, and the surrender and cancellation of the leases held by the Lessee as hereinabove mentioned, the Lessee shall peaceably hold and enjoy the premises hereby demised for the said term without hindrance or interruption by the Lessor or any other person or persons lawfully or equitably claiming by, through, or under him; and without limitation upon the general right hereby granted to use the lands hereby demised for any purpose not herein specifically reserved, restricted or denied, the Lessee shall have the right upon all lands hereby demised, including Forest Reservation Lands, to prospect, dig, bore, drill, and tunnel for water, and to build dams, construct pumping stations, and to

dig, excavate and otherwise construct reservoirs thereon for the storage of water, and to dig, lay, bore and construct ditches, pipe lines, water courses, tunnels and flumes thereon for conducting or leading water to the dams and reservoirs;

And the Lessee hereby covenants with the Lessor as follows:

That it (the Lessee) will pay the said rent in lawful currency of the United States at the office of the Lessor in Honolulu, in manner aforesaid, without any notice or demand;

That it will also pay, when and as the same become due and payable, all taxes, rates, assessments, impositions, duties, charges and other outgoings of every description to which the demised premises or the Lessor or Lessee in respect thereof are now, or may during the said term become liable, and whether the said taxes, rates, assessments, impositions, duties, charges and other outgoings are or shall be assessed to or be payable or dischargeable by law by either the Lessor or Lessee, including all assessments or charges for any permanent benefit or improvement of the premises hereby demised or any part thereof, made under any betterment law or otherwise, or any assessments or charges for sewerage or street or sidewalk improvement or municipal or other charges which may be legally imposed upon the said premises, or to which the said premises or any part thereof or the Lessor or Lessee in respect thereof are now or may during the said term become liable; provided, however, that if any such assessments or charges shall be



payable or may be paid in installments, the Lessee may elect to pay the same by installments and shall be required to pay only those installments which may become due and payable during the term of this lease;

That it will, at its own expense, during the whole of the said term, make, build, maintain, and repair all fences, sewers, drains and roads which may be required by law to be made, built, maintained and repaired upon or in connection with or for the use of the said premises or any part thereof; and also build all fences which, in the judgment of the Lessor, may be necessary to protect the reversion in any manner, and such also as may be necessary to prevent cattle, horses, and other grazing animals from straying from the lands hereby demised onto adjoining lands;

That it will, at its own expense, during the whole of the said term, well and substantially repair, maintain, amend and keep all buildings, reservoirs, dams, ditches, tunnels, flumes, water courses, wells and other improvements and boundary monuments now or hereafter built, made or constructed on the lands hereby demised and all necessary reparations and amendments whatsoever in good order and condition (excepting, however, such improvements and buildings as are of no value whatsoever to the interest of the Lessor and such as have been destroyed or irreparably damaged by Act of God or the public enemy); and also, at its own expense, during the whole of said term, rebuild any and all buildings that may be destroyed by fire within a reason-



able time after such destruction, unless any building so destroyed was of no value to the interest of the Lessor;

That it will permit the Lessor and his agents, at all reasonable times during the said term, to enter the demised premises and examine the state of repair and condition thereof and will repair and make good all defects of which notice shall have been given by the Lessor or his agents with prompt expedition after the receipt of such notice.

That it will during the whole of the said term keep the demised premises in a strictly clean and sanitary condition and observe and perform all the laws, ordinances, rules and regulations relating to health and sanitation for the time being applicable in the premises, and will indemnify the Lessor and the estate and effects of the said Emma Kaleleonalani, deceased, against all actions, suits, damages and claims by whomsoever brought or made by reason of the nonobservance or nonperformance of such laws, ordinances, rules and regulations or of this covenant;

That it will plant and complete prior to January 1, 1946, a barrier-forest zone of a width to be determined by mutual agreement and varying with the terrain, using trees and methods of planting satisfactory to the Lessor within and along the makai boundary of the Forest Reservation and will thereafter care for the trees and where necessary to secure a full stand, will replant where trees shall die or be destroyed; and will not cut down, fell or injure, or suffer to be cut down, felled or injured,

such trees within the aforesaid barrier-forest except in making improvement thinnings;

That it will plant and complete the planting prior to January 1, 1946, of timber trees of commercial value of species and also in a manner satisfactory to the Lessor on all areas suitable to timber trees below the Forest Reservation which are not suitable to other crops and which are reasonably accessible for such purpose, such areas to be determined by mutual agreement; and will thereafter care for the trees and where necessary to secure a full stand will replant where trees shall die or be destroyed; and will not cut down, fell or injure, or suffer to be cut down, felled or injured, any trees or saplings now or hereafter growing upon the lands hereby demised, without written permission from the Lessor except in making improvement thinnings and in preparing land for intensive cultivation, the intent of this covenant being to provide for a future supply of mature timber and in making improvement thinnings to furnish the Lessee with fuel, posts, poles, timber and other forest products:

That, except as hereinbefore expressly provided, the Lessee will not use the Forest Reservation Lands herein demised for any other purpose than as Forest Reservation, and will at all times during the said term administer the same in cooperation with Forestry authorities of the Territory of Hawaii for the time being according to the improved methods adapted to a water conserving forest;

That it will, at all times during the said term, foster and encourage the natural reforestation of

the Forest Reservation Lands hereby demised, and in prosecuting any work of developing water thereon and of diverting such water therefrom will take all reasonable and needful precautions to prevent unnecessary injury to the natural or planted forest growth;

That it will, at all times during the said term, take all reasonable precautions to keep cattle, horses and other grazing animals out of the Forest Reservation Lands and to prevent forest fires occurring thereon, and in case such fires shall occur will use all reasonable means at its command or under its control in having such fires speedily extinguished;

That, whenever requested by the Lessor so to do, the Lessee will, within six (6) months from the date of such request, at its own charge and expense, make and thereafter maintain during the whole of the said term such fencing as the Lessor may deem necessary to protect the Forest Reservation Lands hereby demised from the intrusion of cattle, horses, and other grazing animals;

That it will from time to time and at least once each year during the said term, make a careful inspection of the Forest Reservation Lands hereby demised, and will during the month of January in each year (beginning 1942) submit to the Lessor a written report (in duplicate) of the results of such inspection, stating whether or not any animals detrimental to the forest cover or forest lands, or evidence thereof, or any other damage to or improper use of said forest cover or forest lands,

were observed, and reporting on the general condition of the forest cover and the state of repair and condition of any fences erected for the protection of the Forest Reservation Lands;

That it will, in connection with any water investigation, development, construction, extension and operation on the demised lands hereinabove authorized, furnish to the Lessor from time to time, and not less frequently than once each year during the term of this lease, a full and complete report and statement (in duplicate) of all work done, together with copies of all reports, surveys, maps, plans and other records secured in connection with such work; and will also keep, in a manner satisfactory to the Lessor, complete records of the quantity of water developed, if any, and will furnish copies of such records to the Lessor not less frequently than once in each year of the term of this lease, and, in the event that the Lessee shall develop water on lands not herein demised in such a manner that the flow of water therefrom becomes mixed with the water developed on the demised lands, will install and operate adequate water-measuring equipment and will make, keep and furnish the Lessor sufficient gaugings and records accurately to determine the quantity of water developed on the lands hereby demised;

That it will also, as soon as is reasonably practicable after the end of each calendar year during the term of this lease, furnish the Lessor a full and complete written report (in duplicate) which shall show (1) the acreage of cane harvested during



such year on the demised premises segregated as to plantation fields, and further segregated as to "Cane Lands," and "Miscellaneous Lands," as classified hereinbefore, and specifying the respective tonnages of cane and raw sugar, and crop cycles in months, for each of such fields and classified areas, together with a list of areas by fields planned to be harvested during the following calendar year; (2) the total tonnage of raw sugar produced during the preceding calendar year by the Lessee from cane grown on all land controlled by the Lessee; and (3) the quantities of each form of by-product of sugar or sugar cane produced during the preceding calendar year by the Lessee from cane grown on the demised premises, together with the quantities sold, amounts of gross proceeds received, the year during which such by-products were produced and the quantities remaining unsold at the close of such preceding year;

That it will also, as soon as is reasonably practicable after the end of each calendar year during the term of this lease, furnish the Lessor a full and complete written report (in duplicate) which shall show the quantities of each form of product and by-product, other than sugar or sugar cane or by-products of sugar or sugar cane, produced on the demised premises during the term of this lease, and which were sold during such calendar year, together with the amounts of gross proceeds received from the sale of each such other products;

That in the event that any part or parts of the demised lands at any time or times during the



term of this lease, with the written consent of the Lessor as hereinafter provided, shall be sublet by the Lessee to others for a term at will or at sufferance, or in the event the Lessee shall enter into any cropping agreements with respect to the demised premises or any part thereof, the Lessee will, as soon as is reasonably practicable after the end of each calendar year during the continuance of any such sublease, or cropping agreement, furnish the Lessor with a full and complete written report (in duplicate) which shall show the location and area of each parcel of land so sublet, or made subject to a cropping agreement, together with the term and rent or share reserved;

That the Lessee will at all times during the usual office hours, permit the Lessor or his authorized agents and employees to have free access to all of its books or account, contracts, and papers relative to the business carried on by it in respect of the premises hereby demised in so far as such books of account, contracts and papers shall pertain directly to the determination of the gross value of raw sugar or to the determination of the amount of gross proceeds hereinabove mentioned and to examine the same and make copies thereof or any part thereof, and generally to take and use such reasonable means as the Lessor shall deem fit for ascertaining that the accounts furnished by the Lessee are full and accurate and that the Lessee is otherwise faithfully carrying out the covenants herein contained and on its part to be observed and performed; and that it will furnish the Lessor

henceforth with copies of the detailed annual reports for each year which are submitted by the Lessee to its stockholders;

That it will not make or suffer any strip or waste or unlawful, improper or offensive use of the premises demised herein;

That it will not without the prior consent in writing of the Lessor, mortgage or assign this lease, nor sublet for a term, at will or at sufferance, or in any other manner whatsoever, whether by cropping agreement, or otherwise, part with the possession of the whole or any part of the said demised premises, but the Lessor shall not be required to give such consent without such adjustment in rental as he may require;

That in case any water shall be developed or obtained by digging, boring, drilling, or tunneling on the demised premises, it will lead or conduct such water onto the cultivated areas, and use the same in connection with the operation of the Lessee's business, including the irrigation of sugar cane or other crops, the development of power, the watering of live stock, or for domestic use, and none of such water shall be used on any adjacent land or sold to others before first being brought upon the agricultural lands hereby demised;

That in the use of the demised premises for the planting and cultivating of sugar cane, the Lessee will follow such use in accordance with the standards of good husbandry and approved practices then prevailing in the sugar industry in the Territory of Hawaii, and in the use of the demised premises for

any other purpose whatsoever, the Lessee will follow the best of generally approved methods, and in pursuance of these provisions and in the exercise of such use the Lessee shall, by proper construction and use of drainage ditches and otherwise, take all reasonable precautions to prevent or arrest loss of soil by erosion, to the end that the rent payable under this lease shall be as large as might reasonably be expected; and will continue to do so during the continuance of this lease, with all reasonable skill, care, prudence and diligence, so long as it can be done with reasonable profit to the Lessee; it being understood, however, that in no event, except as hereinbefore provided, shall this covenant be construed to diminish the minimum rent as hereinbefore specified;

That, in the event the Lessee is required to discontinue or temporarily curtail cane cultivation on land controlled by it, due to Governmental restrictions or in order that the Lessee may receive benefits from any general crop reduction program initiated by the Government or by an association of growers, it will not discontinue nor temporarily curtail the cultivation of cane on the demised premises in a greater ratio to the required total curtailment than the ratio the cane area cultivated on the demised premises bears to the total cane area cultivated by the Lessee;

That the Lessee will not, at any time during the said term, on behalf of either itself or others, acquire by purchase or exchange any title in or to any of the kuleanas or other fee simple holdings

within the boundaries of the said demised premises without first notifying the Lessor in writing of its intention so to do and giving him (the Lessor) the first opportunity of acquiring the title in such holdings, provided, however, that in case the Lessor shall elect to acquire the title in such holdings, and does acquire the same, the Lessee shall thereupon be offered the first opportunity of leasing the same at a rent which shall net the Lessor a return of six per centum (6%) on the cost of the holdings thus acquired, for a period of years co-terminus with this lease and upon similar conditions;

That, in the event the Lessor shall bring and sustain an action against the Lessee for breach of any covenant or condition herein contained or for the recovery of possession of the demised premises, the Lessee will pay to the Lessor all costs and expenses incurred by him in such action, including a reasonable attorney's fee;

That it will not quarry any rock on the demised premises without the written consent of the Lessor and that it will not remove any soil from the demised premises; and

That at the end of said term or other sooner determination of this lease, the Lessee will peaceably deliver up to the Lessor possession of the lands hereby demised, together with all erections and improvements upon or belonging to the same, by whomsoever made, in good repair, order and condition, except such as are of no value to the Lessor and such as have been destroyed or irreparably damaged by Act of God or the public enemy.



It Is Mutually Understood and Agreed by the parties hereto as follows:

(a) That in the event the demised premises or any part thereof shall be required, taken or condemned for any public use, then, in every such case, the estate and interest of the Lessee in the part of the premises taken shall at once cease and determine and the Lessee shall not by reason of such taking be entitled to any claim either against the Lessor or others for compensation or indemnity for the taking of any land or water, or any improvements or buildings as shall have been made prior to January 1, 1937, and all compensation payable to or to be paid by reason thereof shall be payable to and be the sole property of the Lessor, and the Lessee shall have no interest in or claim to such compensation or any part thereof whatsoever: provided, however, and it is hereby agreed that such compensation as shall represent the value of any growing crops and cane stools shall be payable to and be the sole property of the Lessee, less Lessor's percentage rental interest therein: and such compensation as shall represent the value of any improvements or buildings made or constructed after January 1, 1937, shall be divided between the Lessor and the Lessee as their interests shall appear, dependent upon the then unexpired term of the lease; and it is further agreed that if such taking shall so affect the remaining premises held by the Lessee under this lease, or so affect the operation of the Lessee's remaining lands and tenancies, or the business being conducted thereon as to cause



substantial damage to the Lessee, then and in that event the Lessee shall have the right to present and pursue its claim for damages and be compensated therefor so long as such action or the payment of such damages shall not affect nor diminish the compensation payable to the Lessor upon condemnation as provided for in this lease.

(b) That the term "by-product of sugar or sugar cane" as used herein shall mean any product which remains over in the cultivation of sugar cane or the manufacture of sugar, and which possesses an actual or potential value of its own in the form in which it remains over; and the term "products and by-products of any kind other than sugar or sugar cane or by-products of sugar or sugar cane" as used herein shall mean any product or by-product which is produced or derived from the demised premises other than water and sugar or sugar cane or by-products of sugar or sugar cane and which possesses an actual or potential value of its own; and that the Lessee shall not sell any product derived from the processing in whole or in part of a by-product of sugar or sugar cane, nor any product or by-product derived from the processing in whole or in part of a product other than sugar cane or sugar without first obtaining from the Lessor written permission so to do, and agreeing with the Lessor upon the method by which the percentage rental with respect thereto shall be calculated;

(c) That all matters of disagreement that may arise under this lease, which cannot be adjusted by the parties hereto to their mutual satisfaction, in-

cluding any matter herein left to future mutual agreement, shall be settled by arbitration and at the desire of either party shall be submitted to and determined by three disinterested arbitrators, one to be appointed by each of the parties hereto, and either party may give to the other written notice of a desire to have an arbitration of the matter or matters in dispute and name therein one of the arbitrators, whereupon the other party shall within ten (10) days after the receipt of such notice, name another arbitrator, and, in case of failure so to do, the party who has named an arbitrator shall have the right to apply to a Circuit Judge of the Circuit Court of the First Circuit of the Territory of Hawaii, requesting him to appoint an arbitrator to represent the party so failing to appoint an arbitrator, and the two arbitrators thus appointed (in either manner) shall select and appoint a third arbitrator, and in the event that the two arbitrators so appointed shall, within ten (10) days after the naming of the second arbitrator fail to appoint the third arbitrator, either party shall have the right to apply to such judge to appoint such third arbitrator, and the three arbitrators so appointed shall thereupon proceed to determine the matter or matters in question, and the decision of any two of them (including the disposition of the costs of the arbitration) shall be final, conclusive and binding upon both parties, and judgment may be entered upon such award by the Circuit Court of the First Circuit unless the same shall be vacated, modified or corrected as provided in Chapter 116, Revised

Laws of Hawaii 1935, or as the same may be amended or reenacted from time to time, the provisions of which said statute shall apply hereto as fully as though incorporated herein;

(d) That in case the Lessor or the Lessee shall be ousted of the possession of any portion or portions of the said "Cane Lands" by reason of the successful assertion of a paramount title, the minimum rent shall be decreased for the remainder of the term at the rate of Fifteen Dollars (\$15.00) per acre per annum for "Cane Lands" of the possession of which such ouster shall have occurred; provided however, that if such ouster shall occur prior to July 1, 1940, such decrease shall only be made from and after July 1, 1940, and if such ouster shall occur after July 1, 1940, such decrease shall be effective from and after the date of such ouster. In the latter case the Lessor shall refund to the Lessee the unearned portion, if any, of the semi-annual installment of the minimum rental which shall have been paid in advance.

(e) That the Lessor shall have the right, up to and including the 30th day of June, 1940, to withdraw from the operation of this lease at such time or times as he may elect, such area or areas as he in his sole discretion may select, of the portion of the demised premises outlined in red on map hereto attached and made a part hereof and marked "Exhibit A," such withdrawals to be progressively from the Puuloa Road and the Oahu Railway and Land Company's main right of way mauka to the new Kamehameha Highway and to consist of strips run-

ning as nearly parallel as is practicable with the said Puuloa Road.

And the Lessor Hereby Covenants With the Lessee as Follows:

1. That in each instance he will notify the Lessee of his intention to withdraw the land at least twelve months prior to the date of withdrawal, such notice to be given to the Lessee at its office at Aiea or in Honolulu at the office of its agent, C. Brewer and Company, Limited, and such notice shall specifically set forth the area and description of the land to be withdrawn, it being the intention hereof that such notice may be given at any time prior to June 30, 1940.

2. That the Lessor will not withdraw lands for the purpose of cultivating sugar cane or knowingly sell or lease lands so withdrawn to third persons for the purpose of cultivating sugar cane or pineapples, but nothing herein contained shall be deemed to require the Lessor to put any restrictive covenants of any nature in any deed, agreement of sale, or lease covering lands withdrawn or exact any agreement as to the use of lands withdrawn by any bona fide purchaser or Lessee or inquire as to the use to which any bona fide purchaser or lessee intends to put said lands.

3. If, pursuant to said notice of withdrawal, possession of said lands so withdrawn is surrendered to the Lessor prior to June 30, 1940, then the minimum rental hereinabove provided for shall be decreased from and after June 30, 1940, for the remainder of the term hereof at the rate of \$15.00



per acre per annum for cane lands surrendered and at such rate per acre per annum as may have been fixed by the Lessor under the terms hereof as a minimum rental for miscellaneous lands used for the growing of sugar cane, but if possession of such lands is not surrendered until after June 30, 1940, then the minimum rental hereinabove provided for shall be decreased from and after such date of surrender for the remainder of the term hereof at the rate of \$15.00 per acre per annum for cane lands surrendered and at such rate per acre per annum as may have been fixed by the Lessor under the terms hereof as a minimum rental for the miscellaneous lands used for the growing of sugar cane, and in the latter case the Lessor shall refund to the Lessee the unearned portion, if any, of the semi-annual installment of minimum rent which has been paid in advance.

4. That he will release the Lessee from all assessments or charges imposed under authority of law and required under the terms of this lease to be paid by the Lessee to the extent that said assessments or charges relate to the areas withdrawn, such release to be effective the date possession of said land is surrendered pursuant to the notice of withdrawal. The assessments or charges for the year in which possession is surrendered as aforesaid shall be pro rated between the Lessor and the Lessee as of the date possession of the land is surrendered pursuant to the terms of the notice of withdrawal.

5. That the Lessee shall have the right to harvest



the cane from the then standing crops on the land surrendered but no ratoons therefrom and shall have the right at its own expense to remove all rails, ties, and pipe lines on the land surrendered. The Lessee shall pay to the Lessor the percentage rental hereinabove provided for the standing crops harvested pursuant hereto.

6. The Lessee shall have the option of surrendering possession of any lands with respect to which the Lessor shall have given the twelve months' notice of withdrawal, at any time prior to the expiration of said twelve months' period and in the event of such surrender the rental, assessments, and charges mentioned in paragraphs 3 and 4 *supra* shall be pro-rated as of the date of such surrender.

Provided, However, and this demise is upon this condition, that if the Lessee shall fail to pay the said rent or any part thereof within thirty (30) days after the same becomes due, whether the same shall or shall not have been legally demanded, or shall become bankrupt, or shall fail to observe or perform faithfully any of the covenants herein contained and on the part of the Lessee to be observed and performed, or shall abandon the demised premises, the Lessor may at once re-enter the demised premises or any part thereof in the name of the whole, and upon or without such entry, at his option terminate this lease without service of legal process and without prejudice to any other remedy or right of action for arrears of rent or for any preceding or other breach of contract, if, after written notice of any such default or breach of contract shall have been given by the Lessor to the Lessee, the

Lessee shall have failed within thirty (30) days after the receipt of such written notice to remedy such default or breach of contract or justify its failure so to do to the satisfaction of the Lessor.

And It Is Hereby Expressly Agreed and Declared that the acceptance of rent by the Lessor shall not be deemed to be a waiver by him of any breach by the Lessee of any covenant herein contained, or of the Lessor's right to terminate this lease for breach of covenant; that the term "Lessor" in these presents shall include the Lessor, his successors in trust and assigns, and also that the term "Lessee" shall include the Lessee, its successors and permitted assigns.

It Is Mutually Understood and Agreed as Follows:

(a) That the term "buildings and improvements thereon" appearing in the clause on page 2 of this lease, reading: "together with all buildings and improvements thereon excepting and always reserving out of this demise," shall be deemed to include all improvements and buildings on said demised premises on January 1, 1937, including specifically but without limitation to the generality of the foregoing language, buildings, lined and permanent trunk lined ditches, flumes, roads, culverts, reservoirs, tunnels, fences and dams and the permanent railroad shown on the blue print hereto attached, marked "Exhibit B" and made a part hereof, together with the appurtenances thereto;

(b) That the term "improvements or buildings as shall have been made prior to January 1, 1937," appearing in the condemnation clause on page 19 hereof, shall be deemed to include all improvements and buildings made or constructed prior to January

1, 1937, including specifically but without limitation to the generality of the foregoing language, buildings, lined and permanent trunk lined ditches, flumes, roads, culverts, reservoirs, tunnels, fences and dams as shall have been made or constructed prior to January 1, 1937, and the permanent railroads shown on said "Exhibit B" hereto attached, and the appurtenances thereto;

(c) That the term "improvements or buildings made or constructed after January 1, 1937," appearing in said condemnation clause on page 20 hereof, shall be deemed to include all improvements or buildings made or constructed after January 1, 1937, including specifically but without limitation to the generality of the foregoing language, buildings, lined and permanent trunk lined ditches, flumes, roads, culverts, reservoirs, tunnels, fences and dams made or constructed after January 1, 1937; it being understood that all compensation payable with respect to rails and ties of permanent railroads constructed after January 1, 1937, and with respect to all portable railroad rails and ties and appurtenances and agricultural trade fixtures such as water tanks, pumps, syphons and removable machinery made or constructed at any time, shall be the sole property of the Lessee; and

(d) That the term "erections and improvements upon or belonging to the same" appearing in the provision with respect to the surrender of possession by the Lessee at the end of the term of this lease or sooner determination hereof, appearing on page 19 hereof, shall be deemed to include all erections and improvements, including specifically but

without limitation to the generality of the foregoing language, buildings, lined and permanent trunk lined ditches, flumes, roads, culverts, reservoirs, tunnels, fences and dams and the permanent railroads shown on said "Exhibit B" hereto attached and made a part hereof, and the appurtenances thereto, but shall not include any railroad rails or ties of permanent railroads constructed after January 1, 1937, nor any portable railroad rails and ties or appurtenances nor agricultural trade fixtures such as water tanks, pumps, syphons and removable machinery made or constructed at any time.

In Witness Whereof the Lessor as such Trustee as aforesaid has set his hand, and the Lessee has caused its name and corporate seal to be set by its proper officers hereunto and to three other instruments of the same date and tenor, the day and year first above written.

/s/ BRUCE CARTWRIGHT,

As Trustee under the Will and of the Estate of  
Emma Kaleleonalani, deceased.

HONOLULU PLANTATION  
COMPANY,

By /s/ JOHN D. McKEE,  
Its President.

By /s/ C. F. JACOBSON,  
Its Secretary.

(Duly Acknowledged)

The original of this document recorded as follows:  
Territory of Hawaii. Office of Bureau of Conveyances. Received for record this 21st day of December, 1937, and recorded in Liber 1415 on pages 254-283, and compared. Signed M. N. Huckestein, Registrar of Conveyances.





U. S. NAVY RESERVATION

B. P. DISHOP ESTATE

7.40 ACES

EMMA KALELEONALANI ESTATE  
BRUCE CARTWRIGHT TRUSTEE

MANALO PLANTATION CO.  
RAILROAD

Road

KAMAHANUI HIGHWAY

To Honolulu

TRUE NORTH

MOANALUA

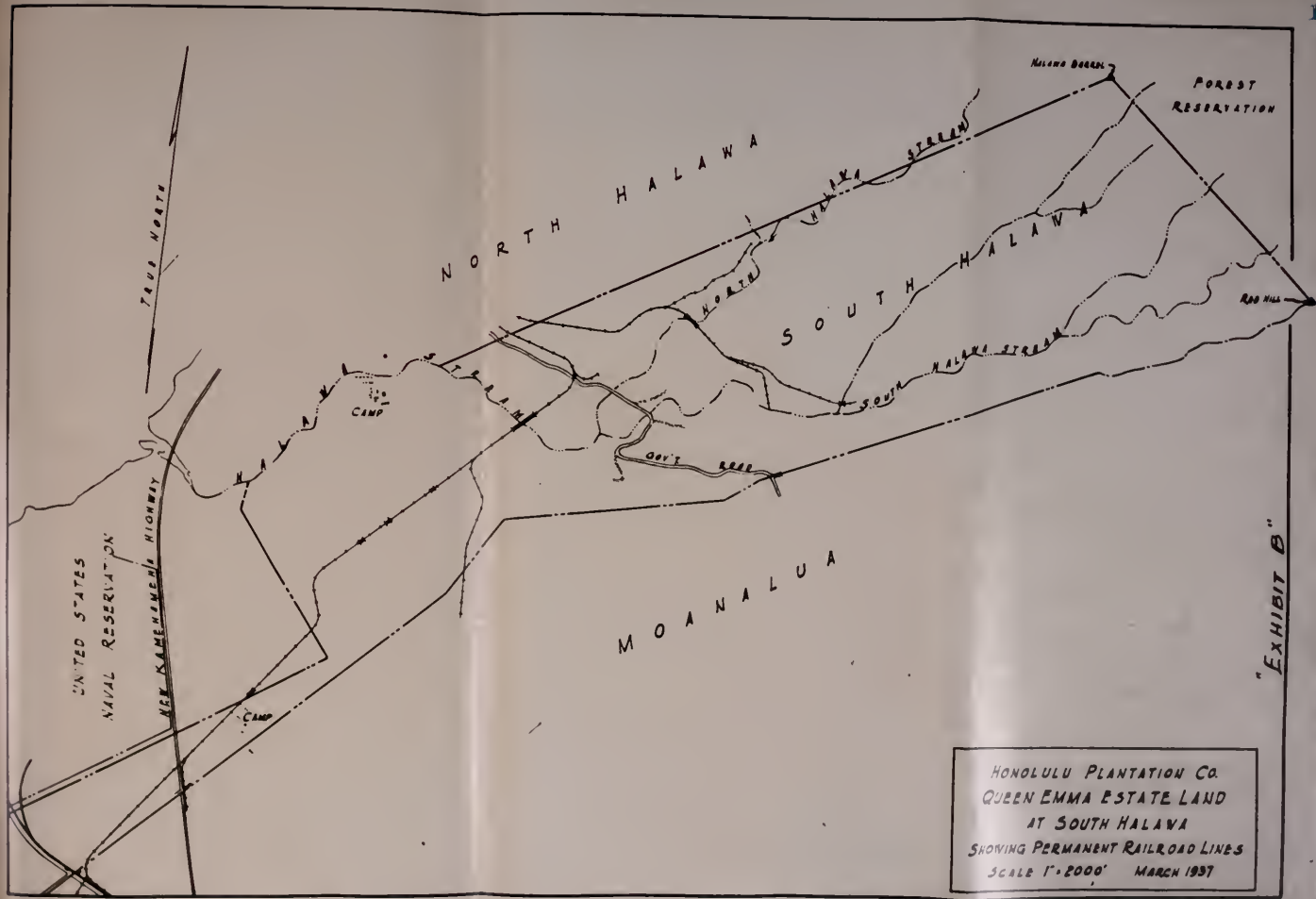
100 FT. RM. OF C. & N. P. R.R.

GOVT.

QUEEN EMMA ESTATE LAND  
PORTION OF L.C. APP. 966 (AMENDED)  
SOUTH HALEA, EWA, OAHU.  
SCALE 1"=300' JAN. 1937

PLATE







HONOLULU PLANTATION EXHIBIT 9-K

(Admitted 12-3-46)

Bishop Trust Company  
Limited

10/21/'40 by P. E. S.

11/29/'40 H.

October 18, 1940

C. Brewer & Co., Ltd.,  
Agents, Honolulu Plantation Company,  
Honolulu, T. H.

Attention: Mr. P. E. Spalding, Vice-President.

Dear Sirs:

RE: Estate of S. M. Damon

The Trustees of the S. M. Damon Estate are willing to lease to the Honolulu Plantation Company for a term of ten years from the expiration of the present lease, or until December 31, 1953, unless there is an earlier determination of the Trust, the areas as set forth under the terms and conditions specified below:

Land to be leased comprising fields now in cane mauka of Kamehameha Highway and makai of the Highway fields 92 to 94 inclusive. (We understand fields 95 and 96 are going to be taken over by the U.S. Army.) Lease of fields 91 and 107 not to



be renewed and these lands to revert to the Estate at the termination of the present lease on December 31, 1943. Fields 97-A and 97-B, known as the "Gore Lot," to be surrendered to the Estate without cost when the present cane growing on said land is harvested.

The minimum rental to be \$15.00 per acre for lands occupied for plantation purposes. Said rental to increase at the rate of 20c per acre per annum for any increase of \$1.00 in the average price of 96° New York raws about \$50.00, and proportionately for any fraction of an increase of \$1.00, said increase, however, to cease when the price of 96° raws exceeds \$100.00.

The Plantation to pay the property taxes.

If the present Sugar Act is to continue in its present or a similar form, 75% of the Federal payments to be added to the New York basis price to determine the average price of 96° raw sugars which fixes the rental value basis.

All areas not in sugar cane and not used for ditches or railroads may be withdrawn by the Estate's giving sixty days' notice, without penalty to the Estate, including any reduction in rent.

The Damon Estate to have an easement over the roads so as to give proper ingress and egress to the lands mauka of fields 82 to 89, also to have the privilege of laying water pipes along such roads at such times as the fields have just been harvested in order not to interfere with plantation operations.

If these terms are agreeable a formal lease can then be drawn up.

Very truly yours,

/s/ J. WATERHOUSE,  
/s/ E. H. WODEHOUSE,  
/s/ W. F. FREAR,  
/s/ J. E. RUSSELL,

Trustees under the Will of Samuel Mills Damon,  
Deceased.

C. Brewer and Company  
Limited

October 21st, 1940

This Letter No. 9870-PES

Trustees under the Will of  
Samuel Mills Damon, Deceased  
c/o Bishop Trust Company, Ltd.  
Honolulu, T. H.

Dear Sirs:

RE: Estate of S. M. Damon

We have for acknowledgement your letter of October 18, 1940 containing an offer to lease to the Honolulu Plantation Company certain lands of the Estate of S. M. Damon for a period of ten years commencing January 1, 1944 and terminating December 31, 1953 and under certain conditions.

The terms of your offer are acceptable to Honolulu Plantation Company. We understand that unless Fields 95 and 96, makai of Kamehameha High-

way, are taken over by some Federal authority before the expiration of the current lease, they will be included in the lands to be leased to Honolulu Plantation Company.

We will prepare a tentative form of lease for submission to you.

Very truly yours,

/s/ P. E. SPALDING,

Vice-President, C. Brewer and Company, Limited,  
Agents for Honolulu Plantation Company.

(Duplicate)

This Indenture of Lease, made this 27th day of June, 1927, by and between Harriet M. Damon, Henry Holmes, A. W. T. Bottomley, and James L. Cockburn, all of the City and County of Honolulu, Territory of Hawaii, Trustees under the Will and of the Estate of S. M. Damon, deceased, hereinafter called the "Lessors," of the first part, and Honolulu Plantation Company, a California corporation, hereinafter called the "Lessee," of the second part.

Witnesseth:

That the Lessors, in consideration of the rent hereinafter reserved and of the covenants herein contained and on the part of the Lessee to be observed and performed, do hereby demise and lease unto the Lessee:

All those tracts or parcels of land situate within the Ahupuaa of Moanalua, City and County of Honolulu aforesaid, being portions of Apana 2 of the land mentioned or described in Royal Patent 7858,

Land Commission Award 7715 to L. Kamehameha, and more particularly bounded and described as follows:

1.—Lot B. Description of a portion of Ahupuaa of Moanalua, L.C.A. 7715 Royal Patent 7858, Apana 2, to L. Kamehameha.

Beginning at a “+” on a stone at the East corner of this piece on the mauka side of Government Road, the co-ordinates of which referred to Government Survey Triangulation Station “Salt Lake” are 9848.3 feet South and 1965.5 feet East and running by true azimuths,—

Along mauka line of Government Road and fence the direct azimuth and distance being,

1.  $59^{\circ} 34'$ —351.4 feet;
2.  $86^{\circ} 48'$ —439.0 feet;
3.  $98^{\circ} 43'$ —536.2 feet along Government Road and fence;
4.  $9^{\circ} 04'$ —21.5 feet to a pipe on the mauka line of O. R. & L. Co.'s 40 foot R. of W.;
5.  $99^{\circ} 04'$ —674.0 feet along mauka line of O. R. & L. Co., 40 foot R. of W. to a pipe;
6.  $9^{\circ} 04'$ —1233.8 feet along Lot A, passing over a pipe at 64.5 feet on the makai side of Government Road to a pipe on mauka side of plantation road;
7.  $67^{\circ} 50'$ —179.3 feet along road and fence;
8.  $45^{\circ} 35'$ —61.1 feet crossing road to a point on Waikiki side of gate; Thence along center line of wall, the direct azimuth and distance being,
9.  $53^{\circ} 48'$ —228.5 feet;
10.  $43^{\circ} 53'$ —394.3 feet;

11.  $121^{\circ} 51'$ —804.0 feet;
12.  $118^{\circ} 54'$ —257.6 feet;
13.  $29^{\circ} 35'$ —340.0 feet;
14.  $129^{\circ} 05'$ —139.0 feet;
15.  $196^{\circ} 02'$ —230.8 feet;
16.  $113^{\circ} 43'$ —210.3 feet;
17.  $94^{\circ} 14'$ —449.5 feet;
18.  $7^{\circ} 59'$ —334.9 feet;
19.  $95^{\circ} 40'$ —345.8 feet;
20.  $343^{\circ} 22'$ —137.0 feet;
21.  $357^{\circ} 25'$ —460.8 feet;
22.  $5^{\circ} 23'$ —262.4 feet;
23.  $43^{\circ} 06'$ —233.4 feet;
24.  $116^{\circ} 18'$ —433.0 feet;
25.  $186^{\circ} 00'$ —360.0 feet;
26.  $156^{\circ} 56'$ —590.7 feet;
27.  $153^{\circ} 38'$ —180.0 feet;
28.  $128^{\circ} 30'$ —220.0 feet;
29.  $102^{\circ} 15'$ — 47.5 feet;
30.  $189^{\circ} 07'$ —1519.7 feet at 102.7 feet passing over a pipe and along Lot C, to a pipe on the makai side of Puuloa Government Road;
31.  $189^{\circ} 04'$ —90.0 feet crossing Government Road, O. R. & L. Co.'s R. of W. to a pipe on the mauka side of R. of W.;
32.  $210^{\circ} 10'$ —751.1 feet along Lot C;
33.  $216^{\circ} 30'$ —610.0 feet along Lot C, to corner of fence;
34.  $295^{\circ} 18'$ — 623.2 feet to corner of fence;
35.  $278^{\circ} 21'$ — 197.5 feet along fence;
36.  $284^{\circ} 46'$ — 183.4 feet along fence;
37.  $275^{\circ} 39'$ —1777.8 feet along fence;



38.  $252^{\circ} 43'$ — 384.9 feet along fence;
39.  $276^{\circ} 20'$ —1230.0 feet along fence;
40.  $348^{\circ} 26'$ — 819.8 feet along fence;
41.  $273^{\circ} 14'$ — 74.8 feet along fence;
42.  $251^{\circ} 39'$ — 171.5 feet along fence;
43.  $275^{\circ} 28'$ — 98.6 feet along fence;
44.  $327^{\circ} 00'$ — 496.4 feet along fence to the point of beginning.

Area 295.43 Acres.

2.—Lot C. Being a portion of the Ahupuaa of Moanalua, L.C.A. 7715, Royal Patent 7858, Apana 2, to L. Kamehameha.

Beginning at a “+” on a stone at the Southwest corner of this parcel on the East side of Puuloa Government Road, the co-ordinates of which referred to Government Survey Triangulation Station, “Salt Lake” are South 9796.2 feet South and 13918.8 feet West and running by true azimuths:

1.  $227^{\circ} 00' 30''$ —8108.0 feet along highway of Halawa at 4363.0 feet passing over a “+” on a rock on the mauka line of O. R. & L. Co.’s R. of W.;
2.  $308^{\circ} 45'$ —338.8 feet;
3.  $320^{\circ} 19'$ —184.1 feet;
4.  $284^{\circ} 03'$ —656.5 feet;
5.  $341^{\circ} 43'$ —169.7 feet;
6.  $347^{\circ} 16'$ —582.2 feet;
7.  $254^{\circ} 32'$ —297.0 feet to a pipe;
8.  $245^{\circ} 09'$ —391.8 feet;
9.  $222^{\circ} 35'$ —395.0 feet;
10.  $258^{\circ} 05'$ —785.0 feet;
11.  $337^{\circ} 55'$ —100.0 feet;

12. 25° 00'—670.0 feet;
13. 350° 50'—370.0 feet;
14. 5° 37'—251.9 feet to a spike;
15. 329° 32'— 59.9 feet;
16. 299° 54'—202.1 feet;
17. 9° 24'—474.5 feet to a pipe; Thence along mauka side of road, the direct azimuth and distance being,
18. 264° 03'—247.2 feet;
19. 291° 32'—405.9 feet;
20. 290° 43'—680.6 feet;
21. 297° 41'—117.2 feet;
22. 259° 13'—131.7 feet;
23. 296° 15'— 85.9 feet to mauka bank of ditch;
24. 328° 40'—176.0 feet along ditch to fence;
25. 18° 56'—142.2 feet along fence;
26. 318° 34'—289.8 feet along fence;
27. 336° 56'—222.7 feet along fence;
28. 311° 14'—388.2 feet along fence to corner;
29. 36° 30'—610.0 feet along Lot B;
30. 30° 10'—751.1 feet along Lot B to pipe on mauka line of O. R. & L. Co., R. of W.;
31. 9° 04'—90.0 feet across O. R. & L. Co.'s R. of W. and Puuloa Government Road to a pipe on the makai side of Government Road;
32. 9° 07'—1417.0 feet along Lot B, to a pipe;
33. 97° 24'— 185.5 feet along makai side of road;
34. 7° 24'— 150.7 feet to wall;
35. 40° 10'— 410.0 feet along wall and fence;
36. 72° 43'— 299.2 feet along wall and fence;
37. 14° 31'— 435.3 feet along wall and fence;
38. 49° 45'— 176.6 feet along wall and fence;

39. 116° 51'— 395.0 feet along wall and fence;
40. 59° 20'— 241.0 feet along wall and fence;
41. 182° 47'— 652.0 feet along wall and fence;
42. 109° 39'— 367.0 feet along wall and fence;
43. 130° 57'— 417.0 feet along wall and fence;
44. 115° 57'— 352.0 feet along wall and fence;
45. 192° 16'— 68.0 feet along wall and fence;
46. 107° 32'— 248.0 feet along wall and fence;
47. 50° 25'— 277.0 feet along wall and fence;
48. 29° 02'— 262.0 feet along wall and fence;
49. 315° 09'— 162.0 feet along wall and fence;
50. 350° 12'— 316.0 feet along wall and fence;
51. 356° 35'— 260.0 feet along wall and fence;
52. 320° 02'— 180.0 feet along wall and fence;
53. 356° 19'— 169.0 feet along wall and fence;
54. 353° 24'— 90.0 feet along wall and fence;
55. 92° 06'— 306.0 feet along wall and fence;
56. 135° 00'— 172.0 feet along wall and fence;
57. 116° 24'— 332.0 feet along wall and fence;
58. 128° 04'— 144.0 feet along wall and fence;
59. 189° 53'— 300.0 feet along wall and fence;
60. 96° 46'— 205.0 feet along wall and fence;
61. 25° 50'— 152.0 feet along wall and fence;
62. 98° 25'— 430.0 feet along wall and fence;
63. 25° 10'— 310.0 feet along wall and fence;
64. 50° 00'— 455.0 feet along wall and fence;
65. 94° 35'— 173.0 feet along wall and fence;
66. 61° 12'— 236.0 feet along wall and fence;
67. 107° 20'— 123.0 feet along wall and fence;
68. 184° 52'— 839.4 feet along fence;
69. 110° 06'— 263.4 feet along fence;
70. 191° 54'— 693.9 feet along waste land;

71.  $204^{\circ} 56'$ — 289.4 feet along waste land to a spike;
72.  $118^{\circ} 04'$ — 100.0 feet along makai side of road;
73.  $50^{\circ} 55'$ — 325.0 feet along waste land;
74.  $157^{\circ} 20'$ — 125.0 feet along waste land;
75.  $201^{\circ} 55'$ — 221.7 feet along waste land to plantation road;
76.  $118^{\circ} 04'$ —1527.6 feet along makai side of plantation road;
77.  $68^{\circ} 54'$ —1897.0 feet along waste land to stone wall;
78.  $70^{\circ} 25'$ —1342.0 feet along stone wall;
79.  $166^{\circ} 10'$ — 545.0 feet along land of Halawa to the point of beginning.

Area 985.83 Acres.

3.—Lot D. Description of a portion of Ahupuaa of Moanalua, L.C.A. 7715, Apana 2, Royal Patent 7858 to L. Kamehameha.

Beginning at the Northwest corner of this lot, on the boundary of Halawa and Moanalua, co-ordinates referred to Government Survey Triangulation Station, "Salt Lake" being 2816.2 feet South and 6451.5 feet West and running by true azimuths:

1.  $350^{\circ} 20'$ —470.0 feet parallel to and 6 feet North of pipe;
2.  $70^{\circ} 20'$ —708.0 feet along Reservoir Lease;
3.  $114^{\circ} 10'$ —112.0 feet along Reservoir Lease;
4.  $227^{\circ} 00'$ —955.7 feet along Halawa to the point of beginning.

Area 5.1 Acres

4.—Lot. E. Description of a portion of Ahupuaa of Moanalua, L.C.A. 7715, Royal Patent 7858, Apana 2, to L. Kamehameha.

Beginning at a point on the Easterly side of this lot, said point being 6672.0 feet South and 1422.0 feet West of the Government Survey Station "Salt Lake," and running as follows, by true azimuths:

1.  $56^{\circ} 05'$ —208.0 feet along fence;
2.  $327^{\circ} 02'$ —550.0 feet along fence;
3.  $26^{\circ} 05'$ —257.0 feet along road;
4.  $18^{\circ} 12'$ —283.0 feet along road;
5.  $43^{\circ} 00'$ —647.0 feet along road;
6.  $75^{\circ} 13'$ —350.0 feet;
7.  $95^{\circ} 40'$ —445.0 feet;
8.  $158^{\circ} 58'$ —228.0 feet;
9.  $192^{\circ} 07'$ —164.0 feet;
10.  $213^{\circ} 00'$ —104.0 feet;
11.  $187^{\circ} 43'$ —93.0 feet;
12.  $163^{\circ} 38'$ —263.0 feet;
13.  $192^{\circ} 50'$ —336.0 feet;
14.  $225^{\circ} 53'$ —322.0 feet;
15.  $215^{\circ} 53'$ —295.0 feet;
16.  $226^{\circ} 37'$ —264.0 feet;
17.  $262^{\circ} 37'$ —344.0 feet;
18.  $155^{\circ} 45'$ —107.0 feet;
19.  $124^{\circ} 20'$ —132.0 feet;
20.  $97^{\circ} 18'$ —378.0 feet;
21.  $110^{\circ} 10'$ —371.0 feet;
22.  $161^{\circ} 48'$ —230.0 feet;
23.  $167^{\circ} 54'$ —355.0 feet;
24.  $180^{\circ} 00'$ —127.0 feet;
25.  $202^{\circ} 52'$ —155.0 feet;
26.  $191^{\circ} 21'$ —230.0 feet;
27.  $187^{\circ} 16'$ —162.00 feet;
28.  $204^{\circ} 34'$ —366.0 feet;



29.  $162^{\circ} 24'$ —66.0 feet;
30.  $246^{\circ} 35'$ —160.0 feet;
31.  $316^{\circ} 40'$ —232.0 feet;
32.  $278^{\circ} 45'$ —213.0 feet;
33.  $255^{\circ} 21'$ —145.0 feet;
34.  $233^{\circ} 25'$ —166.0 feet;
35.  $222^{\circ} 01'$ —77.0 feet;
36.  $207^{\circ} 52'$ —240.0 feet;
37.  $227^{\circ} 52'$ —58.0 feet;
38.  $222^{\circ} 18'$ —204.0 feet;
39.  $211^{\circ} 05'$ —216.0 feet;
40.  $217^{\circ} 08'$ —203.0 feet;
41.  $291^{\circ} 57'$ —170.0 feet to Salt Lake; thence following the shore of Salt Lake to the initial point, the direct azimuth and distance being,  $10^{\circ} 43' 15''$  3122.7 feet.

Area 96.0 Acres.

5.—Lot F. Portion of L.C.A. 7715, Royal Patent 7858, Apana 2, to L. Kamehameha.

Beginning at a pipe on the makai side of road and Ewa side of ditch from which Government Survey Triangulation Station, "Salt Lake" is by true azimuth  $250^{\circ} 29'$  3764.5 feet and running along left side of ditch the direct azimuth and distances being,

1.  $153^{\circ} 15'$ —133.2 feet;
2.  $191^{\circ} 44'$ —218.0 feet;
3.  $183^{\circ} 43'$ —92.6 feet;
4.  $241^{\circ} 23'$ —109.5 feet;
5.  $213^{\circ} 50'$ —143.6 feet;
6.  $238^{\circ} 28'$ —138.7 feet;
7.  $212^{\circ} 50'$ —92.2 feet;
8.  $262^{\circ} 07'$ —115.1 feet;

9.  $294^{\circ} 01'$ —170.2 feet;
10.  $266^{\circ} 37'$ —124.7 feet;
11.  $247^{\circ} 46'$ —236.7 feet;
12.  $233^{\circ} 11'$ —210.4 feet;
13.  $224^{\circ} 14'$ —309.0 feet;
14.  $253^{\circ} 06'$ —184.5 feet;
15.  $291^{\circ} 22'$ — 67.5 feet;
16.  $277^{\circ} 18'$ —169.4 feet;
17.  $286^{\circ} 33'$ —105.2 feet;
18.  $278^{\circ} 53'$ —105.9 feet;
19.  $257^{\circ} 32'$ —140.1 feet;
20.  $320^{\circ} 15'$ — 65.0 feet to fence;
21.  $24^{\circ} 27'$ —1985.1 feet along fence to makai side of ditch; Thence along makai side of ditch, the direct azimuth and distance being,
22.  $119^{\circ} 20'$ —287.6 feet;
23.  $113^{\circ} 31'$ —256.5 feet;
24.  $92^{\circ} 00'$ — 75.2 feet;
25.  $160^{\circ} 10'$ — 82.6 feet;
26.  $113^{\circ} 05'$ —244.9 feet;
27.  $92^{\circ} 25'$ —185.1 feet;
28.  $124^{\circ} 40'$ —224.8 feet;
29.  $145^{\circ} 45'$ —206.6 feet to point of beginning.

Area 53.30 Acres.

6.—Lot G. Description of a portion of Ahupuaa of Moanalua, L.C.A. 7715, Royal Patent 7858, Apana 2, to L. Kamehameha, reservoir lot.

Commencing at the South West corner of this lot at a point marked by a stone monument, which bears N.  $47^{\circ} 05'$  E. and is distant  $154 \frac{1}{3}$  feet from the North East corner of the land described in lease dated August 31st, 1899, and made between

the said S. M. Damon as Lessor and said Honolulu Plantation Company as Lessee, on the boundary between Halawa and Moanalua, the boundary runs thence by true bearings:

1. N.  $47^{\circ} 05'$  E.—927.5 feet along said boundary to a point marked by a stone monument, thence
2. S.  $65^{\circ} 50'$  E.—126.0 feet to corner of fence.
3. N.  $70^{\circ} 20'$  E.—850.0 feet along fence and to a point inside fence,
4. S.  $48^{\circ} 37'$  W.—320.0 feet to the corner of fence,
5. S.  $63^{\circ} 20'$  E.—400.00 feet to the corner of fence,
6. N.  $82^{\circ} 30'$  W.—481.0 feet to the corner of fence,
7. S.  $48^{\circ} 00'$  W.—223.0 feet to the corner of fence,
8. S.  $14^{\circ} 22'$  E.—423.0 feet to the corner of fence,
9. N.  $39^{\circ} 15'$  W.—340.0 feet to the corner of fence,
10. S.  $56^{\circ} 50'$  W.—543.0 feet to the corner of fence,
11. S.  $57^{\circ} 40'$  E.—520.0 feet to the corner of fence,
12. S.  $66^{\circ} 00'$  W.—213.0 feet to the corner of fence,
13. N.  $87^{\circ} 30'$  W.—576.0 feet to the corner of fence,
14. N.  $23^{\circ} 53'$  W.—432.0 feet to the corner of fence to the point of commencement and containing an

Area of 16.00 Acres,

a little more or less, between the existing line of fence and the Halawa and Moanalua boundary.

The total area hereby demised is 1451.66 acres, of which area 1223.91 acres are or are deemed to be cane lands.

Together with such rights of way, of the nature of easements, for a railway or railways, field roads, flumes, ditches, tunnels, syphons and pipe lines over the adjoining lands of the Lessors as at present ex-

isting and used by the Lessee or such extensions thereof only as it may hereafter be found necessary to construct to install for use in connection with the cultivation and agricultural use of the parcels of land hereby demised, provided always that such hereinabove mentioned existing rights-of-way are used and such extensions thereof are constructed or installed and used so that they will not interfere with any use by the Lessors and their tenants of the adjoining lands of the Lessors and so that all the said above mentioned rights-of-way can be crossed on the level with vehicles at points suitable to the Lessors and that the Lessors and their tenants or tenants of land adjoining the parcels of land hereby demised are held harmless and free and clear of all liability against any claim for damages sustained by the Lessee or its employees, servants or agents by reason of the Lessors or any of them, or any of their said tenants crossing the said hereinabove mentioned rights-of-way by vehicles of any description.

And together with the right to take from the other lands of the Lessors makai of and adjoining the lands hereinabove demised coral, rock and sand for use on the lands hereby demised, so long only as such other lands shall continue to be in the actual occupation of the Lessors, but this right shall not be exercised except in a reasonable manner and so as not to depreciate the use or value of such other lands nor otherwise to cause an injury or trouble to the Lessors.

To Have and to Hold the same unto the Lessee

from and including the first day of January, 1929, for the term of fifteen (15) years thence next ensuing, the Lessee Yielding and Paying therefor yearly and every year during the said term unto the Lessors the rent of Twenty-eight Thousand Six Hundred Eighty-seven Dollars (\$28,687.00) in four (4) equal payments of Seven Thousand One Hundred Seventy-one Dollars and Seventy-five cents (\$7,171.75) each in advance on the first days of January, April, July and October in each and every year during the continuance of this lease, without any deduction, the first of such payments to be made on the first day of January, 1929; Provided, however, and it is hereby agreed, that if it should be found at any time during the term of this demise that the Lessee has planted in cane a larger area of the demised premises than the area of 1223.91 acres, which it represents is cane land, it, the Lessee, shall pay to the Lessors, additional rent for such cane land in excess of 1223.91 acres at the rate of Eighteen Dollars and Fifty Cents (\$18.50) per acre per annum; and at the expiration of this lease the Lessee shall according to the practice of cane cultivation followed in the Island of Oahu, be permitted to continue, but only in regular course of husbandry, the cultivation and harvesting of the then matured or maturing crop of cane on the demised premises until same is fully mature and harvested and shall pay rent for the area of the land so occupied by the Lessee or in use or under its control and until possession thereof is actually surrendered to the Lessors at the rate of \$23.50 per acre per annum;



And the Lessors hereby covenant with the Lessee that upon payment by the Lessee of the rent as aforesaid and upon observance and performance of the covenants by the Lessee hereinafter contained, the Lessee shall peaceably hold and enjoy the said demised premises for the term hereby demised without hindrance or interruption by the Lessors or any other person or persons lawfully or equitably claiming by, through or under them;

And the Lessee hereby covenants with the Lessors as follows:

That it (the Lessee) will pay the said rent in United States gold coin at the office of the Lessors or their agent in Honolulu in manner aforesaid, without any deduction, and without any notice or demand;

That it will also pay all taxes, rates, assessments, impositions, duties and other outgoings of every description to which the said premises or the Lessors or Lessee in respect thereof are now or may hereafter during the said term become liable, and thereafter so long as any of the said premises shall continue in the occupation of the Lessee and become liable, and whether the same taxes, rates, assessments, impositions, duties, charges and other outgoings are or shall be assessed to or be payable by law by either the Lessors or Lessee, including all assessments or charges for any permanent benefit or improvement of the premises hereby demised, or any part thereof made under any betterment law or otherwise or any assessments or charges for sewerage or street or sidewalk improvements or

municipal or other charges which may be legally imposed upon the said premises, or to which the said premises, or any part thereof or the Lessors or Lessee in respect thereof are now or may during the said term become liable;

That it will out of its own moneys during the whole of the said term, make, build, maintain and repair all fences, drains and roads required by law to be made, built, maintained and repaired upon or in connection with or for the use of the said premises or any part thereof;

That it will also out of its own moneys forthwith construct and erect and thereafter during the remainder of the said term, maintain and keep in good repair, a good and substantial fence around the several parcels of land hereby demised and will not impound or cause to be impounded any cattle or horses of the Lessors or of their tenants of adjoining lands that may be found on the said lands hereby demised nor hold the Lessors liable for any damage that may be done by the cattle or horses of said Lessors or their tenants of adjoining lands to the lands hereby demised or to anything thereon;

That it will not make or suffer any strip or waste or unlawful, improper or offensive use of said premises or of any improvements thereon, nor, without the consent of the Lessors in writing mortgage or assign this lease nor sublet nor part with the possession of the whole or any part of the said premises;

That it will use the land hereby demised for cultivation only or in furtherance of the cultivation of

such parcels thereof as shall be suitable for cultivation and, except as herein demised, shall not exercise any rights over any other parts of the Ahupuaa of Moanalua except rights of way over public roads whether such rights are or are not appurtenant to the lands hereby demised;

That it will not sink any additional wells on any land within the boundaries of the Ahupuaa of Moanalua nor use any water raised on or taken or derived from any such land other than it is now entitled to use without the consent in writing of the Lessors first had and obtained;

That it will from time to time and at all times during the said term well and substantially repair, maintain, amend and keep all buildings and improvements now or hereafter to be built on the parcels of land hereby demised with all necessary reparations and amendments whatsoever;

That it will permit the Lessors or their agents at all times during the term hereby demised to enter the said premises and examine the condition thereof, and survey the same;

That it will on the 31st day of December, 1935, or on the 31st day of December, 1940, at the option of the Lessors deliver up to the Lessors peaceable possession of such portion of the tract or parcel of land hereinbefore described as Tract B as may lie or be situate on the makai side of the government road from Honolulu to Puuloa, containing an area of 138.17 acres of cane land, on the Lessors giving to the Lessee not less than 18 months previous notice in writing to surrender the same and on such

surrender the rent hereby reserved shall be reduced to \$26,130.85 per annum for the remainder of the said term of 15 years; and

That at the end of the said term or other sooner determination of this lease, it will peaceably deliver up to the Lessors possession of the said demised premises, together with all erections and improvements upon or belonging to the same by whomsoever made, except buildings and machinery, in good repair, order and condition;

Provided, However, and this demise is upon this condition, that if the Lessee shall fail to pay the said rent or any part thereof within thirty (30) days after the same becomes due, whether the same shall or shall not have been demanded, or shall become bankrupt or go into liquidation, or shall fail faithfully to observe or perform any of the covenants or conditions herein contained and on its part to be observed or performed or shall abandon the said premises, the Lessors may at once re-enter the said demised premises or any part thereof in the name of the whole and at their option terminate this lease without service of notice or legal process and without prejudice to any other remedy or right of action for arrears of rent or for any preceding or other breach of contract;

And it is hereby expressly agreed and declared that the acceptance of rent by the Lessors shall not be deemed to be a waiver by them of any breach by the Lessee of any covenant herein contained, and that the term "Lessors," in these presents shall include the Lessors, their successors in trust and as-



signs, and also that the term "Lessee," shall include the Lessee, its successors and permitted assigns;

In Witness Whereof the Lessors have set their hands and seals and the Lessee has caused its name and corporate seal to be set hereunto and to three other instruments of like date and tenor the day and year first before written.

/s/ HARRIET M. DAMON,

/s/ HENRY HOLMES,

/s/ ALLEN W. T. BOTTOMLEY,

/s/ JAS. L. COCKBURN,

Trustees under the Will and of the Estate of S. M.  
Damon, deceased.

HONOLULU PLANTATION  
COMPANY,

By /s/ R. A. COOKE,  
and /s/ HORACE JOHNSON,  
Its Attorney-in-fact.

(Duly Acknowledged)

The original of this document recorded as follows:  
Territory of Hawaii, Office of Bureau of Conveyances. Received for record this 1st day of July A. D. 1927 at 2:02 o'clock P.M. and recorded in Liber 888 on pp. 111-124 and compared. (Signed) Carl F. Wikander, Registrar of Conveyances.





## HONOLULU PLANTATION EXHIBIT No. 10

(Admitted in Evidence 12-10-46)

## MAIN HICKAM FIELD TAKING

Civil Case No.	Owner	Total Ac. in Suit	Acres under control of H. P. Co.			Date Taken June 10/30 Suit filed Feb. 25/35 Judgment filed
			Total	Cane Field No.	Cane by Field	Cane by Owner
289	Main Hickam Field Taking.....	359.17		98	66.50	
	1. Bishop Estate .....	.....		99	86.75	
				100	18.75	
						172.00
	2. Queen Emma .....	671.556	(old)	97	85.50	
		671.556		101	42.50	
				102	57.00	
				103	84.50	
				104	75.00	
						344.50
	3. Damon Estate .....	1,176.40		105	50.50	
				106	24.75	
				107 (por.)	46.50	
						121.75
	4. T. of T. ....	6.0				
	5. C & C of Honolulu.....	2.204				
	6-7. Bishop & Emma (Govt. Rd.)....	9.10				
	8. T. of H. ....	1.03				
			760 ac.		638.25	638.25
			under H.P. Co. control	Given in answer Civil 289 as 640 ac.		

Land Dept. Dec. 10, 1946

REAL PROPERTY INVENTORY SCHEDULE

January 1, 1945

City and County of Honolulu

	TOTALS				Commercial		Hotel & Apts.		Residential		Agricultural		Miscellaneous	
	Acres	%	Value	%	Acres	Value	Acres	Value	Acres	Value	Acres	Value	Acres	Value
1. B. P. Bishop Est.	57,705.97	14.93	17,511,464	4.29	165.63	4,416,799	85.46	2,582,592	2,024.68	5,980,518	18,313.90	2,127,088	37,177.30	2,384,467
2. Jss. Campbell Est.	51,212.56	13.25	6,052,177	1.48	56.08	1,181,988			571.93	611,709	40,217.52	4,135,304	10,367.03	123,176
3. Malialua Ag. Co.	28,737.01	7.43	2,798,591	.69	1.88	7,543			119.36	30,342	23,118.68	2,755,209	5,497.09	5,497
4. John I. Est. Ltd.	17,027.77	4.40	2,050,597	.50	12.50	74,573			288.91	97,675	9,676.10	1,841,641	7,050.26	36,708
5. H. K. L. Castle	13,977.39	3.62	1,211,030	.30	6.28	50,665			383.97	631,397	6,841.88	464,890	6,745.26	64,078
6. L. L. McCandless Est.	6,255.44	1.62	452,928	.11	3.25	234,343			380.24	108,073	3,524.48	97,537	2,347.47	12,973
7. Waiwae Co.	7,123.76	1.84	236,037	.07	3.69	8,845			154.53	74,655	4,483.35	198,394	2,482.19	14,143
8. Tions Sec. Corp.	6,385.27	1.65	268,296	.07	.57	749			105.27	125,530	3,381.84	119,618	2,877.59	22,399
9. S. M. Dannon Est.	5,302.05	1.37	1,209,718	.30	4.50	82,843			415.85	700,098	4,868.28	346,426	13.42	80,351
10. M. P. Robinson Est.	5,405.10	1.40	1,156,430	.28	5.09	197,682	.90	47,007	5.30	12,076	4,338.29	898,618	1,055.52	1,047
11. Mary E. Foster Est.	4,627.08	1.20	98,318	.02	.08	13,225			23.72	31,935	4,525.06	52,131	78.22	1,027
12. Kuaioa Ranch Ltd.	4,001.25	1.04	292,235	.07					192.07	192,270	839.41	72,154	2,969.77	27,811
13. J. M. Austin Est.	2,903.60	.75	694,763	.17	1.41	611,421				655.94	74,563	2,246.25	8,779	
14. J. P. Mendonca Tr. Est.	2,773.59	.72	527,961	.13	1.33	203,444			209.68	84,220	2,483.13	240,065	79.45	232
15. Geo. Galloway Tr. Est.	2,248.08	.58	466,222	.11						2,000.49	465,969	247.59	247.59	253
16. Kuaioa Land Trust	2,394.91	.62	95,922	.02	1.65	4,295			137.70	25,116	928.19	58,547	1,327.37	7,964
17. Robert Hind Ltd.	2,117.30	.55	194,440	.05					8.54	18,882	306.50	129,901	1,802.26	45,657
18. Hawaiian Aracado Co.	2,115.70	.55	74,190	.02	3.88	2,726			7.95	1,476	2,095.87	69,980	8.00	8
19. Oahu R. & L. Co.	1,735.18	.45	4,752,587	1.17	502.89	4,568,374			103.09	118,577	1,015.74	53,129	113.46	12,507
20. Makaleia R. & L. Co.	2,359.80	.61	160,002	.04					197.85	102,320	2,141.65	97,553	20.30	129
21. Emma Keleleoni	2,716.38	.70	989,370	.24	3.80	496,119	18.99	332,421	1.72	2,066	1,137.55	92,219	1,554.32	66,543
22. Roman Catholic Church	1,467.07	.38	976,957	.24	4.20	207,436			6.02	13,387	1,259.73	50,453	197.12	705,621
23. Sing Chong Co.	1,424.32	.37	66,019	.02					15.32	11,631	900.43	51,337	508.57	3,051
24. Hawaiian Pineapple Co.	991.35	.26	3,542,523	.87	60.69	3,435,166			48.19	96,326	877.12	10,564	5.35	67
25. Charlotte H. L. Cassidy et al	921.15	.24	156,946	.04					25.43	73,409	595.72	74,537	300.00	9,000
26. Haw'ian Land & Imp. Co.	699.00	.18	172,094	.05	2.67	60,141	1.43	5,238	.34	1,213	663.55	101,736	30.81	3,766
27. Chas. W. Lucas Trust	791.71	.20	58,286	.01					4.36	8,550	524.35	45,002	263.00	4,734
28. Mahiwa Water Co.	519.66	.13	145,430	.04	2.41	39,488			63.40	65,927	429.32	38,307	24.53	1,708
S/T 28 Owners	235,940.00	(61.04)	46,471,531	(11.40)	844.00	15,897,925	17.00	2,967,258	5,495.00	9,219,378	142,144.00	14,743,272	87,410.00	3,643,698
All other Taxpayers	47,671.00	12.33	158,184,140	38.79										
Total Taxpayers	283,611.00	(73.37)	204,655,671	(50.19)										
Government Exempt														
Federal	51,890.00	13.42	164,276,284	40.29										
Territorial	50,324.00	13.02	31,448,126	7.71										
County	735.00	.19	7,375,405	1.81										
S/T - Governmente	102,949.00	(26.63)	203,099,815	(49.81)										
GRAND TOTAL	386,560.00	100.00	407,755,486	100.00										



## HONOLULU PLANTATION EXHIBIT No. 15

(Admitted in Evidence 1-10-47)

## RE: SUGAR CANE ACREAGE

January 1, 1935

Territory	Oahu			
	Acres	%	Acres	%
Fee	122,873	53.00%	5,610	13.26%
Leases	108,971	47.00	36,696	86.74
Total	231,844	100%	42,306	100%

January 1, 1939

Territory	Oahu			
	Acres	%	Acres	%
Fee	126,289	54.14%	5,934	13.60%
Leases	106,982	45.86	37,728	86.40
Total	233,271	100%	43,662	100%

January 1, 1944

Territory	Oahu			
	Acres	%	Acres	%
Fee	123,173	55.90%	5,859	14.86%
Leases	97,141	44.10	33,568	85.14%
Total	220,314	100%	39,427	100%

Tax Office

Honolulu, T. H.

November 20, 1946

C. C. Crozier



## HONOLULU PLANTATION EXHIBIT No. 16

(Admitted in Evidence 12-19-46)

HONOLULU PLANTATION COMPANY  
SUGAR CANE ACREAGE

January 1, 1935

Fee .....	146.57 Ac.	2.96%
Leases .....	4,811.73 Ac.	97.04
<hr/>		<hr/>
Total.....	4,958.30 Ac.	100%

January 1, 1939

Fee .....	155.01 Ac.	3.05%
Leases .....	4,929.55 Ac.	96.95
<hr/>		<hr/>
Total.....	5,084.56 Ac.	100%

January 1, 1944

Fee .....	159.69 Ac.	4.09%
Leases .....	3,741.30 Ac.	95.91
<hr/>		<hr/>
Total.....	3,900.99 Ac.	100%

Note: Loss of 1,183.573 Ac. of cane 1939 to 1944 or 23.27%.

Tax Office

Honolulu, T. H.

November 20, 1946

C. C. Crozier

HONOLULU PLANTATION EXHIBIT No. 18

(Admitted in Evidence 1-10-47)

C. Brewer and Company, Ltd., Letterhead

This Letter No. 1114-PES

August 21, 1941

Trustees under the Will of  
Samuel Mills Damon, Deceased  
c/o Bishop Trust Company  
Honolulu, T. H.

Gentlemen:

We have for acknowledgment your letter of August 15, 1941.

Since your offer of October 18, 1940 and our acceptance of same on October 21, 1940 Honolulu Plantation Company has proceeded in the operation of the lands to be leased under the full assurance of an undisturbed tenancy until December 31, 1953. In these operations Honolulu Plantation Company has expended substantial sums in the improvement of the property. Several of the fields included in your offer of October 18, 1940 have been taken under governmental condemnation proceedings. Any lease is subject to such a contingency and does not alter the tenancy of the lands remaining.

Your specific offer of October 18, 1940 and our unconditional acceptance of October 21, 1940 constituted a binding agreement which could only be altered by mutual consent. You are therefore advised that your supplementary offer of August 15,

1941 is rejected and that Honolulu Plantation Company will adhere to its full rights as established by the existing agreement.

Yours very truly,

C. BREWER AND COMPANY,  
LIMITED,

Agents, Honolulu Plantation  
Company,

P. E. SPALDING,  
President.

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HONOLULU PLANTATION CO. EXHIBIT  
NO. 19

(Admitted in Evidence 12/19/46)

79th Congress, 1st Session, House of Representatives. Report No. 1313.

HONOLULU PLANTATION CO.

November 28, 1945.—Committed to the Committee of the Whole House and ordered to be printed.

Mr. Keogh, from the Committee on Claims submitted the following

REPORT

(To accompany H. R. 2688)

The Committee on Claims, to whom was referred the bill (H. R. 2688) to confer jurisdiction upon the United States Court of Claims to hear, determine, and render judgment upon the claim of Honolulu

Plantation Co., having considered the same, report favorably thereon with amendments and recommend that the bill as amended do pass.

The amendments are as follows:

Page 1, line 2, after the enacting clause strike out the remainder of the bill and insert in lieu thereof:

That jurisdiction is hereby conferred upon the United States Court of Claims, notwithstanding any prior determination, statute, or decision, to hear, determine, and render judgment upon the claim of Honolulu Plantation Company, a California corporation, for damages to its real property, mill, water system, remaining leaseholds, and other enterprise properties not expropriated by the United States Government, and located on the Island of Oahu in the Territory of Hawaii, for the depreciation in the market value thereof arising out of the expropriations by the United States of divers lands upon which said claimant held leases, in proceedings wherein said lands were condemned in the United States District Court in and for the Territory of Hawaii, and designated as Civil Nos. 416, 430, 434, 436, 442, 452, 514, 525, 529, 533, 535, 544, and 548.

Sec. 2. The damage to be ascertained and adjudged shall be the difference in the fair market value of the fee lands, mill, and other enterprise properties of said claimant as the same existed in 1936, prior to the filing of the aforesaid condemnation suits, and as the same remained in 1945 after the severance and loss of the beneficial use of the said leased lands of said claimant condemned and expropriated by the United States as aforesaid.

Sec. 3. Any suit brought under the provisions of this Act shall be instituted within one year after the date of approval of this Act; and from any decision or judgment rendered in any suit commenced under authority of this Act, a writ of certiorari to the Supreme Court of the United States may be applied for by either party thereto as provided by law in other cases. All testimony adduced before and all documents received by the subcommittee of the Committee on Claims of the House of Representatives shall be competent evidence of said damages and shall be received upon record thereof made before said committee, as fully and to the same extent as though the witnesses were present and without further proof and certification.

Amend the title so as to read:

A bill to confer jurisdiction upon the United States Court of Claims to hear, determine, and render judgment upon the claim of Honolulu Plantation Company.

### OBJECT OF THE BILL

The object of the bill is to reimburse the stockholders of the claimant for depreciation in the market value of its real estate and fixtures sustained by reason of the expropriation by the United States of approximately 2,428 acres of land held by the claimant under lease and used in conjunction with its real estate as a unit, which said acquisitions occurred during the period following 1936 and ending January 1, 1945. Each of said leases contained clauses which terminated the rights of the lessee-



claimant upon the filing of condemnation suits by public authority.

At the invitation of the Governor of Hawaii extended through the Delegate to Congress, appropriation for the expenses thereof having been previously made by the Territorial legislature, a subcommittee of this committee, appointed by the chairman, visited Hawaii in October 1945 for the purpose of investigating claims pending before the committee from Hawaii and of hearing testimony on the same from persons resident in said Territory. Among said claims was the instant bill (H. R. 2688) for the relief of Honolulu Plantation Co. Although the majority of stockholders of this company which is organized under the laws of California live in the State of California, the principal assets and business of the company consist of the sugar plantation, mill, and other necessary properties of a plantation operation on the island of Oahu in said Territory. The properties lie adjacent to Pearl Harbor.

### INSPECTION OF THE PROPERTY

The committee viewed the property for the damage to which relief has been sought; and also viewed the property formerly held by the claimant on which it had held leases which were canceled by the action of the United States in expropriating the said lands to the use of the Government, in the period following 1936 and concluding January 1, 1945. The committee having viewed all of the property remaining to the claimant, including its mill,

water system, the leased lands remaining to it, and other properties, is of the firm opinion that substantial damage in the depreciation in the market value of the property remaining to and owned by the claimant had been done by reason of the severance of lands held under lease by claimant and on which it had produced the sugar cane to be manufactured into raw and refined sugar in its mill, as well as to its water system, pumping system, and other properties which the committee finds from its examination and the testimony are and were necessary to maintenance and operation of a plantation for the growing sugar cane.

The committee is, however, of the opinion that the detail and proof thereof could be better had and more satisfactorily determined by affording the claimant and opportunity of introducing proof thereon in the Court of Claims and establishing the same by the opinion of experts in the usual manner, for which reason it is recommended that, without reference to any rule of law in relation to the same, that claimant have determined by said court the amount of the depreciation in the value of its remaining property as of 1945 by reason of the severance of the lands formerly held by it under lease, which lands were condemned in proceedings commenced in the United States District Court for the Territory of Hawaii and known as Civil Suits Nos. 416, 430, 434, 436, 442, 452, 514, 525, 529, 533, 544, and 548.

The committee is further of the opinion that the court should have for consideration as evidence the

written record of testimony and the exhibits presented to its subcommittee, for the purpose of adjudicating the damage which the committee finds to have been done.

## LAND TENURE IN HAWAII AND BUSINESS PRACTICES

The committee finds that the practice of leasing lands instead of owning them and of building up enterprises with leased lands for the purpose of raising sugar cane was the prevailing practice in the islands.

The committee heard the testimony of the deputy Territorial tax commissioner who is in full charge of real and personal property in the Territory (since 1932) and who had spent some 30 years in the real-estate business in the islands. He had made a complete study of plantations and land tenure in the Territory. The witness presented exhibit 7 which had been prepared at the request of the attorney general of the Territory for the information and use of the Territorial legislature. It showed that 64.4 percent of all of the lands on the island of Oahu (249,023.85 acres) as of January 1, 1944, were held by 28 large landowners. The exhibit also showed that the Territory of Hawaii itself owned a total of 13.205 percent of the lands on said island (51,050.47 acres); that the Federal Government owned a total of 11.796 percent of the lands on said island (45,599.78 acres); and that the balance of 10.58 percent (40,885.9 acres) were the only lands held in private ownership out of a total of

386,560 acres of land on the entire island. The same exhibit also demonstrated that 10 large trusts and estates owned 55 percent of all of the lands on said island.

Table XIV attached to exhibit 1 of the claimant is a list of the landlords of the claimant. It showed that its landlords are (by reference to exhibit 7) among the 10 largest landholders who own 55.31 percent of all of the lands on the island of Oahu.

The witness presented exhibit 6 which showed the percentage relationship between fee holdings and leaseholds on the island of Oahu for the period beginning 1935 and ending 1945. In 1935 the total number of acres of land devoted to sugar cane cultivation on this island was 42,306. Of this total 86.75 percent (36,696 acres) were leased from large landholders and trusts.

In 1945 out of a total of 38,180 acres in sugar cane cultivation, 84.8 percent (32,378 acres) remained in sugar cane cultivation after the Federal takings and were operated under leases by plantation companies conducting their business precisely as that conducted by claimant.

The witness testified that the entire system of land tenure in the Territory was largely one of leaseholds; and on the island of Oahu, he said, that land occupancy was roughly 15 percent fee ownership and 85 percent leases. The witness testified that the relative ownership of lands and the proportion of leases held by the claimant was in accordance with the prevailing business practices in the Territory of Hawaii and particularly on the island of Oahu.



The witness gave the historical background of the establishment of plantations in the Territory and testified that the present system of land ownership and leasing began about 1851, prior to which a division of lands in the Territory had been made by the Government of the then Hawaiian Kingdom. He stated that from the time of annexation, or from about 1900, to date, the land ownership in the Territory had been fundamentally its best investment because of the assured return, and that while many owners have passed out of existence the lands have continued to be held by estates, by their heirs, and by corporations engaged in land holding, and that it is difficult, if not impossible, for any plantation to buy the fee. This, especially since 1900.

### NATURE OF DAMAGE

The evidence before this committee is that in excess of \$5,000,000 were invested in this claimant's enterprise, all of which was indispensable to the raising and marketing of sugar cane. That this sum was largely invested in a mill, water and pumping system, and sundry other requirements such as housing for workers, hospital, and the like. All of these were located on fee-owned lands of the claimant which were not devoted to raising sugar cane. This practice and method was followed by the other plantations on the island. Exhibit 8 which was prepared by the deputy Territorial tax assessor was a study of the capital investment of all plantations on the island of Oahu made by that officer after a



study of plantation methods and requirements. It showed that, in addition to the fee value of the lands on which the crops were grown, plantations had an average investment of \$1,023 per acre of arable sugar cane-producing lands, and that actual investment in capital of this claimant in 1939 before any expropriations of leased lands had occurred was \$983 for every acre in production. After the takings the exhibit showed that the investment for the same purpose rose to \$1,512 per acre. This witness testified that, in his opinion, considering the whole of the property before any of the taking and that which remained after the takings, that the remaining lands and property of the claimant had suffered a capital impairment of approximately 40-percent depreciation in value of its remaining properties.

George C. Schmutz, a qualified appraiser, presented a formal written appraisal which is incorporated in exhibit 1. That appraisal, with exhibits attached, appraised the damage before and after the takings to the claimant's remaining properties to be \$3,000,000, after considering the valuation of the property upon the earning basis before and as reduced by the expropriation of leased lands, next upon the excessive capital investment per acre of arable remaining lands, and finally by reference to the public evaluation of the remaining physical properties as evidenced by the quoted price of its stock on the San Francisco Stock Exchange. In 1936, before any expropriations of leased lands, the physical assets of the claimant

were quoted on the market at \$30.12 per share, or a capital value of \$7,530,000, while in 1944 the stock had sunk to \$10.25 per share, or a total value of \$2,562,500. The capital investment of the claimant is 250,000 shares of paid-in capital having a par value of \$20 per share, or \$5,000,000, no part of which has been expropriated by the Government, but it has been severed from arable lands held capable of producing an average of 30,000 to 35,000 tons of cane for grinding in the mill of the claimant each year. Testimony of the operators of the mill and plantation property, as well as the actual inspection of the property by the committee, showed that the property which remained had an overcapacity of fully 50 percent, and, in the opinion of the committee, that its market value has been substantially depreciated by reason of the taking of its leased lands in an amount which should be more accurately ascertained by a determination thereof in the Court of Claims.

THE CLAIMANT HAS RECEIVED NO  
COMPENSATION FOR ANY DAMAGE  
DONE TO IT

The committee finds that in 1932 614 acres of leased sugar cane lands under lease to this claimant were taken in a proceeding known as No. 289 in the United States District Court for the Territory of Hawaii. The claimant here has asserted no claim for any damage to its remaining properties by reason thereof but has demonstrated the fact that that expropriation reduced the possibility of ad-

justing the operation of the claimant in its enterprise by acquiring other leases when further expropriations occurred. The committee also heard the testimony of the Government appraiser who evaluated the properties which were the subject of this said proceeding and finds that notwithstanding any language in any of the documents filed therein that no allowance was made in appraisal for damage to the fee lands, mill, water system, and other properties of this claimant remaining to it after the severance of these leased lands from its enterprise; and the committee finds that the remaining properties were at no time appraised for the purpose of determining the same by the Government appraisers.

The committee further finds that notwithstanding any language appearing in the stipulation, exhibit 2, and the judgment, exhibit 3, in Civil Suits Nos. 416, 430, 434, 436, and 452, that nothing was allowed or considered for damage to the remaining properties of the claimant for the depreciation in the value of its remaining properties. The committee heard the testimony of the appraiser who evaluated said lands for the Government in said proceedings, as well as the Government attorney who negotiated the settlement referred to in a stipulation, exhibit 2, between the United States and claimant in the aforesaid proceedings. The Government attorney identified the data, computations, and formula (exhibit 13), upon which the amount paid the claimant on a judgment (exhibit 3) entered pursuant to said stipulation. He stated there

the moneys paid were only for growing crops, tools, improvements, a portion of compliance payments which would have been received by claimant had said crops matured to harvest, and that the only other item considered was a "trade" made to effect a compromise on overhead by allowing claimant a portion of the overhead to which it asserted it had committed itself in order to raise to maturity the crops expropriated, to wit: Insurance, taxes, foremen's salaries, and items of similar nature which the claimant was required to pay and which the taking of the crops necessitated its paying although no value was derived therefrom. The Government appraiser testified that he never considered under his contract any depreciation in the value of the claimant's remaining properties but confined his consideration to the actual lands taken and the improvements thereon.

Although a stipulation for the value of growing crops has been entered into between the United States and the claimant in proceedings known as Civil Nos. 514, 525, 529, 533, 535, 544, and 548, it is clear that from this stipulation no payment has been made for the depreciation in the properties of the claimant remaining to it after the condemnation of the fee to the lands under lease to claimant and referred to in these suits.

The committee is of the opinion that the indisputable proof is that the Government has never awarded the claimant anything for the damages for which this claim has been presented.

The committee further finds that each of the



leases upon the lands referred to in all of the aforesaid condemnation suits contained identical clauses inserted on the insistence of the lessors and which clause terminated the lessee's interest in any lands leased upon condemnation thereof. Thus the claimant had no recourse but to appeal to Congress since its fee property was not actually expropriated.

### SUMMARY

The committee finds:

1. That the claimant conducted its business according to the accepted and long-established business customs in the Territory of Hawaii but is without legal remedy because of the termination of its contractual rights under the terms of its leases which were drawn in accordance with standards of business prevailing in Hawaii.

2. That no compensation has ever been awarded or considered for the damage for which this relief has been sought.

3. That by reason of the extensive expropriation, by the Federal Government, of lands upon which the claimant held leases, the physical properties of the claimant remaining to it after such severance have been depreciated in market value between 1936, before the expropriations, and 1945, when the last of said expropriations occurred, to an extent which this committee feels is substantial and which it recommends be heard and determined by judgment of the Court of Claims.

4. That no precedent will be established by



granting the relief here sought since it is the opinion it could only have occurred in the Territory of Hawaii because of the nature of the land holdings prevailing in the Territory.

For all of these reasons your committee having viewed the property, examined witnesses, and considered the matter at length recommends that the bill, as amended, do pass.

Office of the Attorney General,  
Washington, D. C., July 12, 1945.

Hon. Dan R. McGehee,  
Chairman, Committee on Claims,  
House of Representatives, Washington, D. C.

My Dear Mr. Congressman: This will refer to your request for my views with respect to a bill (H. R. 2688) to provide compensation to Honolulu Plantation Co., a California corporation, as compensation for damages sustained.

The bill would direct payment to the Honolulu Plantation Co., a California corporation, of the sum of \$3,250,000 as compensation for damages and loss of property sustained by the company by reason of the expropriation by the United States of lands held under leases owned and operated by the company.

The bill does not set forth the grounds upon which the claim is based except in very general terms. From the information available in this Department, however, it appears that properties of the Honolulu Plantation Co. were involved in a number of condemnation proceedings instituted on

behalf of the United States. Most of these proceedings have been concluded by stipulation or voluntary settlement with the Honolulu Plantation Co., accepting the compensation to be paid as complete satisfaction of its claim for just compensation for the property taken.

The compensation to be paid to the Honolulu Plantation Co. for the taking of its property was fixed by judgments entered pursuant to stipulations or agreements with the claimant. There does not appear to be any legal or moral obligation to pay any additional compensation.

In the light of the foregoing circumstances I am unable to recommend enactment of the bill.

I have been advised by the Director of the Bureau of the Budget that there would be no objection to the submission of this report.

Sincerely yours,

TOM C. CLARK,  
Attorney General.

The Secretary of the Navy,  
Washington, July 20, 1945.

Hon. Dan R. McGehee,  
Chairman of the Committee on Claims,  
House of Representatives.

My Dear Mr. Chairman: The bill H. R. 2688 to provide compensation to Honolulu Plantation Co., a California corporation, as compensation for damages sustained, was referred by your committee to the Navy Department with request for a report thereon.

The purpose of the bill (H. R. 2688) is to pay to Honolulu Plantation Co., a California corporation, the sum of \$3,250,000 as compensation for the damages to and the loss of property sustained by said company to its mill, water system, and other property of its enterprise by reason of the expropriation by the United States of America of divers lands held under lease owned and operated by this company as a part of its enterprise.

The Navy Department is advised by the Department of Justice that most of the condemnation proceedings covering the Government's acquisition of leasehold rights of the Honolulu Plantation Co. have been concluded by stipulation or voluntary settlement with the company, which has accepted the compensation paid as full and complete satisfaction of all claims against the United States. However, the following observations are submitted with respect to any cases which may not have been so concluded.

According to the company's petition to Congress filed in support of the subject bill, the fee acquisitions of the Federal Government in this matter represent 2,428.44 acres, of which 1,734.11 acres are reported as acquisitions for naval uses. For the purpose of this report, the figures of the company are accepted as substantially accurate, although permission is requested to file such corrected data as a further study may disclose.

The statement of the president of the company, which appears in the company's petition to Congress, asserts that the amount sought to be appro-

priated is not for the payment or recompense of any business loss or loss of profits but "the entire amount for which redress is sought is to reimburse the stockholders for that part of their capital which has disappeared or has been destroyed as a result of the governmental action." In other words, the company's claim is one for the reduction (resulting from the Government's taking) in capital value of that part of its enterprise which remains after the Government's taking.

Although the company's petition does not include copies of the leases under which it occupied the various lands that were taken by the Government, it appears that there are five major leases involved, four of which have more than 20 years to run and the fifth does not expire until December 31, 1953.

Concerning the use of the property under these leases, the company's president in his statement said: "The company's stockholders and its directors have assumed that the company would always be able to lease these lands for cane cultivation for so long as the company desired to remain in business. This was so because the use to which they were being put by the Honolulu Plantation Co. was their best and most profitable use, and, therefore, it was to the mutual advantage of owners and plantation to come into harmony. Under these circumstances, these lands were considered as valuable to Honolulu Plantation Co. and were, in fact, as useful, as though each parcel had been owned in fee simple instead of leased. Certainly, having



the full use of them for long periods for production, the company derived all of the benefits of having title to them without the additional investment of capital in them."

Apparently the company has come to Congress for relief in the matter because it has been advised by its counsel that as lessee it has no recourse at law. In this connection, the company's petition to Congress points out that—

"The Government's legal position as stated by the Attorney General in a few court appearances and repeated by various branches of the Government is that upon the basis of decided cases, the Government is foreclosed from making any compensation for the loss of the beneficial use of these croplands to the plantation, because of the separation of ownership between fee and beneficial use and because of the fact that the plant site itself was not physically appropriated, wherefore it contends that there can be no 'severance damage' paid for the plant site."

The case of *Baetjer v. The United States* (143 F. (2d) 391) involved practically the same circumstances as are presented here, except that in the *Baetjer* case, the lands acquired by the Government were owned in fee, whereas in the present case they were occupied under long-term leases. *Baetjer* was trustee for Eastern Sugar Associates which owned approximately 30,000 acres of cane lands, roughly two-thirds of which, together with the company's mills, were located on the island of Puerto Rico. The remaining 10,000 acres, more or



less, were situated on Vieques Island, 10 to 17 miles distant. Most of these lands on Vieques Island were condemned by the United States for naval uses. The district court discarded evidence introduced for the purpose of showing that the capital value of the company's holdings on the island of Puerto Rico had depreciated as a result of the takings of its lands on Vieques. The circuit court of appeals (first circuit) held that the evidence was admissible for the purpose of showing that the overcapacity of the mills with respect to cane lands available to supply them had depreciated in value. "In short," the court said, "the stricken evidence would indicate a compensable loss only if it means that after the taking the appellants' mills had an uneconomic overcapacity so that they could not be operated by anyone as efficiently and therefore as profitably as before the taking, this being a matter which a hypothetical willing buyer would consider in determining what he would pay for the property."

The Navy Department is not informed of any "decided case" that has ever held that a different principle than that followed in the Baetjer case should be applied in a situation where the lands taken were occupied under long-term leases under circumstances such as we have here, nor does it understand that the Attorney General of the United States has ever had occasion to sanction such a distinction.

Whatever differences of viewpoint there may be on the subject, the Navy Department suggests that the legal phases of the matter be fully explored by

counsel for the Claims Committee before final action is taken on the bill. If the committee's counsel should, following a careful investigation of the matter, determine that the Company has a remedy at law, the Navy Department believes that the company should be required to pursue the remedy in the courts. If, on the other hand, no legal remedy is found to exist and it should appear that the claim is one based on equity alone, the bill would be objectionable in that its enactment would involve a precedent opening up the floodgates by encouraging the filing of many claims for consequential damages of a nature which the highest courts have repeatedly held are not compensable on the basis of law.

For the foregoing reasons the Navy Department strongly recommends against the enactment of the bill H. R. 2688.

The Navy Department has been informally advised by the Bureau of the Budget that there would be no objection to the submission of this report.

Sincerely yours,

JAMES FORRESTAL.

War Department

Washington, July 19, 1945.

Hon. Dan R. McGehee,  
Chairman, Committee on Claims.  
House of Representatives.

Dear Mr. McGehee: The War Department is opposed to the enactment of H. R. 2688, a bill to provide compensation to Honolulu Plantation Co.,

a California corporation, as compensation for damages sustained, with regard to which you have requested the views of this Department.

Under the proposed legislation the Secretary of the Treasury is authorized and directed to pay to the Honolulu Plantation Co., a California corporation, the sum of \$3,250,000 as compensation for the damages to and the loss of property sustained by the said company to its sugar mill, water system, and other properties of its enterprises by reason of the expropriation by the United States of America of divers lands held under leases owned and operated by the company as an integral part of its enterprise.

The company represents in its petition to the Congress for relief that during the years from 1935 to June 1944, inclusive, the War and Navy Departments condemned in fee simple a total of 2,325.53 acres of land bordering on the perimeter of Pearl Harbor, T. H., which the company held under lease from various lessors for the growing of sugar cane for use in the operation of its sugar-refining mill. Of the 2,325.53 acres, 753.55 acres allegedly were condemned at the request of the War Department and 1,571.98 acres at the request of the Navy Department. The company's petition further shows that initially it had a total of 7,400 acres under its control, including lands purchased by the company in fee simple. On this land, but principally on the land owned in fee simple, which the United States district engineer, Honolulu, T. H., estimates as 313 acres, the company had erected

extensive improvements consisting of a sugar-refining mill, warehouses, service shops, dwellings, fences, wells, pumping stations, booster stations, irrigation ditches, pipe lines, canals, a narrow gage railway, and other facilities required in its cane-growing and sugar-refining operations.

In 1936 the company extended the term of four of its five major leases to December 1, 1965, and in 1940 extended the term of the fifth lease to December 31, 1953. The company estimates its capital investment in excess of \$4,000,000. It alleges that the lands appropriated by the Government were the most productive and the most economically operated cane areas held by the plantation and that, as a result thereof, it has suffered a loss of capital amounting to not less than \$3,000,000.

In its petition to the Congress the company, in effect, is claiming severance damages due to (1) an immediate shrinkage in the value of the assets and (2) the impairment of the ability to earn a fair return upon the value of the residual investment. It states that both elements resulted from the takings of lands having a raw sugar availability of approximately 30,000 tons per annum and leaving property with a sugar availability of approximately 15,000 tons per annum.

The company seeks relief from the Congress principally on the alleged ground that it is "the firm and consistent policy of the Federal departments concerned to confine payments and offers of payment to the taking of such tangible property as was severed from the integrated enterprise, valued



on such separated basis and with respect solely to the tangible property owned in full and complete title by the petitioner;" that the company has no remedy at law; that the Departments concerned would subject to petitioner to long years of expensive litigation by their opposition to the establishment of a legal exception to the above rule under the special facts of the petitioner's case; and that consequently the Congress is the only forum now open to the petitioner for the recovery of the just compensation guaranteed by the fifth amendment to the Constitution.

The contentions of the petitioner set forth above do not appear to be well founded insofar as the War Department is concerned. Of the 753.55 acres of company-leased land allegedly taken by the War Department, the records of this Department show that only 623.37 acres were taken for the War Department and that 614 acres thereof were taken by condemnation proceedings instituted in the United States District Court for the Territory of Hawaii, Civil No. 289, in June 1932 and concluded by judgment of the court on February 25, 1935. This judgment awarded \$117,686 to the Honolulu Plantation Co. "in full for its interests in the land and improvements to be condemned (except such amount as it may be entitled to receive from the compensation awarded or to be awarded the owners of the fee pursuant to separate stipulations entered into with them) for damages to growing crops, and for damage due to the severance of the leasehold interests owned by it and to be con-



demmed from the remaining leasehold interests which it owns and for its interest in the improvements on the land to be condemned which is owned by the trustees of the S. M. Damon estate." The judgment further provided that the said company had the right to harvest all crops then being grown by it upon certain fields subject, however, to exceptions as to particular fields which were either to be handed over to the War Department by certain definite dates or within specified times after written notice by the commanding general of the Hawaiian Department. This judgment was rendered the year prior to the year in which the company states that four of its five major leases were extended for an additional term of 30 years.

It is the considered view of this Department that the court gave full consideration to the total damages to the company arising out of the taking of the 614 acres by the War Department and that the judgment of the court included complete reimbursement for all damages sustained by the company as a result of the taking. The 70.96 acres allegedly condemned by the War Department in 1940 were actually taken by the Federal Works Agency and hence any damages resulting from this taking, although the land was used for military housing purposes, is not believed to be the responsibility of the War Department.

The War Department does not believe that further relief to the company through the enactment of a private relief bill such as H. R. 2688 is advisable. Relief to the company, if any, was available

through an appeal from the decision of the local Federal court. The records of this Department do not disclose that an appeal was prosecuted. The question of the value of the property taken and any severance damages to the remainder of the company's holdings is considered to have been adjudicated. Under the circumstances, the War Department is opposed to the enactment of H. R. 2688.

This bill would result in the payment of \$3,250,000 to the petitioner and would undoubtedly bring forth a flood of similar bills for relief of parties who are dissatisfied with settlements made by the Government or the courts.

The Bureau of the Budget advises that there is no objection to the submission of this report.

Sincerely yours,

ROBERT P. PATTERSON,

Acting Secretary of War.

UNITED STATES EXHIBIT "A"

(Admitted in Evidence 1-14-47)

C. Brewer and Company  
Limited

November 29, 1940.

This Letter No. 10003-CHM  
Received Nov. 30/40.

(Copy)

Trustees Under the Will of  
Samuel Mills Damon, Deceased  
c/o Bishop Trust Company, Ltd.  
Honolulu, T. H.

Dear Sirs:

Proposed New Lease of Moanalua Lands to  
Honolulu Plantation Company

In further reply to your favor of October 18, 1940, we now indicate that a tentative form of lease has been drawn up by us and same is submitted to you, herewith.

No effort has been made to describe the areas to be leased as these will have to be prepared by some surveyor who has complete data, but said description should, of course, include the fields mentioned in your favor and certain adjacent land that is now held under the existing lease, except the areas recently condemned.

It may be well to fix the aggregate minimum rental figure with definiteness when the form of lease is finally accepted.

We will be glad to prepare the form of new lease in a permanent way if you will furnish us with a description of the land to be demised and will also indicate your approval of the form of said new lease as submitted, or state what changes you desire to have made therein.

The condemnation of two areas recently effected would seem to us to call for a refundment of the rent paid for the last quarter of this year, proportionate to the area that has been lost.

Likewise, Honolulu Plantation Company has paid the taxes on the condemned land for the full year of 1940, and here again, equity would seem to call for a refundment of 1/4th of the 1940 taxes, proportioned on the area lost by virtue of said condemnations. May we request your favorable consideration of these two items?

Very truly yours,

C. BREWER AND COMPANY,  
LIMITED.

CHAS. H. MERRIAM,  
Manager, Land Department.

CHM:LHM Encl.

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UNITED STATES EXHIBIT "B"

(Admitted in Evidence 1-14-47)

This Indenture of Lease, made this ..... day of ..... 1940, by and between J. Waterhouse, E. H. Wodehouse, W. F. Frear and J. E. Russell, all of Honolulu, City and County of Honolulu,

Territory of Hawaii, Trustees under the Will and of the Estate of Samuel M. Damon, deceased, hereinafter called the "Lessors", of the first part, and Honolulu Plantation Company, a California corporation, hereinafter called the "Lessee", of the second part,

Witnesseth:

That the Lessors, in consideration of the rent hereinafter reserved and of the covenants herein contained and on the part of the Lessee to be observed and performed, do hereby demise and lease unto the Lessee:

All those certain tracts or parcels of land situate within the Ahupuaa of Moanalua, City and County of Honolulu, Territory of Hawaii, being portions of Apana 2 of the land mentioned or described in R. P. 7858 L.C.A. 7715 to L. Kamehameha, particularly described as follows:

(Description of land)

The total area hereby demised is            acres, of which area            acres are or are deemed to be cane lands.

Together with such rights of way, of the nature of easements, for a railway or railways, field roads, flumes, ditches, tunnels, syphons and pipe lines over the adjoining lands of the Lessors as at present existing and used by the Lessee or such extensions thereof only as it may hereafter be found necessary to construct or instal for use in connection with the cultivation and agricultural use of the parcels of land hereby demised, provided always that such hereinabove mentioned existing rights-of-way are



used and such extensions thereof are constructed or installed and used so that they will not interfere with any use by the Lessors and their tenants of the adjoining lands of the Lessors and so that all the said above mentioned rights-of-way can be crossed on the level with vehicles at points suitable to the Lessors and that the Lessors and their tenants or tenants of land adjoining the parcels of land hereby demised are held harmless and free and clear of all liability against any claim for damages sustained by the Lessee or its employees, servants or agents by reason of the Lessors or any of them, or any of their said tenants crossing the said hereinabove mentioned rights-of-way by vehicles of any description.

To have and to hold the same unto the Lessee from and including the first day of January, 1944, for the term of Ten (10) years thence next ensuing, or a lesser term if the Trust hereinabove mentioned is determined prior to the end of the said ten year period, and at the expiration of this lease the Lessee shall according to the practice of cane cultivation followed in the Island of Oahu, be permitted to continue, but only in regular course of husbandry, the cultivation and harvesting of the then matured or maturing crop of cane on the demised premises until same is fully mature and harvested and shall pay rent for the area of the land so occupied by the Lessee or in use or under its control and until possession thereof is actually surrendered to the Lessors at the rate of 15.00 per acre per annum;

Yielding and paying therefor yearly and every year during said term unto the Lessors rent as follows:

**Minimum Rental:** The minimum rent shall be payable in four (4) equal installments, each in advance, on the 1st days of January, April, July and October in each and every year during the continuance of this lease, without any deduction, the first of such payments to be made on the 1st day of January, 1944, and the minimum rent for each calendar year for the land under lease shall be at the rate of Fifteen Dollars (\$15.00) per acre for the area of land cultivated in cane. Said rental to increase at the rate of twenty cents (20c) per acre per annum for any increase of One Dollar (\$1.00) in the average price of 96° New York raw sugar above Fifty Dollars (\$50.00) per ton and proportionately for any fraction of an increase of One Dollar (\$1.00), said increase, however, to cease when the price of 96° raw sugar exceeds \$100.00 per ton. In case the present Sugar Act continues in its present or a similar form, 75% of any Federal compliance payment for the production or marketing of sugar shall be ascertained and there shall also be determined the total tons of sugar harvested or marketed by the Lessee during the particular year in which the compliance payment is received and then there shall be determined the actual increase in the price per ton of sugar due to said payments which fractional increase per ton shall be added to the average market price per ton of 96° New York raw sugar and this

determination shall fix the rental value basis as hereinabove provided.

Payment of any increase in rental above the minimum basis shall be made within a reasonable time,—not more than 30 days,—after the close of the calendar year when the average price of sugar for such year can be determined together with the amount of any compliance payment received during the same year.

Lessors reserve, however, the right to withdraw from this Lease any or all areas not in sugar cane cultivation or not used for ditches or railroads upon giving to said Lessee sixty (60) days written notice of said intended withdrawal. Any such withdrawal will not entitle the Lessee to any abatement of rent.

Lessors also reserve from this lease an easement right-of-way, in common with the Lessee, over all roads leading mauka from Kamehameha Highway to other lands of said Lessors lying mauka of Fields 82 to 89, inclusive, for the purpose of ingress and egress to said lands. Said Lessors also reserve the right and privilege of installing water pipes along said roads to the mauka lands above referred to, it being agreed, however, that the work of installing said water pipes will only be performed at a time immediately subsequent to the harvesting of cane from said Fields 82 and 89, inclusive.

And the Lessors hereby covenant with the Lessee that upon payment by the Lessee of the rent as aforesaid and upon observance and performance of the covenants by the Lessee hereinafter contained,

the Lessee shall peaceably hold and enjoy the said demised premises for the term hereby demised without hindrance or interruption by the Lessors or any other person or persons lawfully or equitably claiming by, through or under them;

And the Lessee hereby covenants with the Lessors as follows:

That it (the Lessee) will pay the said rent in United States legal currency at the office of the Lessors or their agent in Honolulu in manner aforesaid, without any deduction, and without any notice or demand;

That it will also pay all taxes, rates, assessments, impositions, duties and other outgoings of every description to which the said premises or the Lessors or Lessee in respect thereof are now or may hereafter during the said term become liable, and thereafter so long as any of the said premises shall continue in the occupation of the Lessee in proportion to such occupancy and become liable, and whether the same taxes, rates, assessments, impositions, duties, charges and other outgoings are or shall be assessed to or be payable by law by either the Lessors or Lessee, including all assessments or charges for any permanent benefit or improvement of the premises hereby demised, or any part thereof, made under any betterment law or otherwise or any assessments or charges for sewerage or street or sidewalk improvements or municipal or other charges which may be legally imposed upon the said premises, or to which the said premises, or any part thereof or the Lessors or Lessee in



respect thereof are now or may during the said term become liable; provided, however, that the Lessors shall take no action of any nature which might create a liability upon the Lessee in the form of a permanent benefit or improvement without the consent of the Lessee; and provided, further, that if real property tax valuations are placed upon the property, or any part thereof which will require annual tax payments by the Lessee equal to, or in excess of the within rental rates per acre, then the Lessee may at its option withdraw from that portion of the property so taxed upon giving written notice to the Lessor of its intention so to do at least six months prior to such withdrawal;

That it will out of its own moneys during the whole of the said term, make, build, maintain and repair all fences, drains and roads required by law to be made, built, maintained and repaired upon or in connection with or for the use of the said premises or any part thereof;

That it will also out of its own moneys forthwith construct and erect and thereafter during the remainder of the said term, maintain and keep in good repair, a good and substantial fence around the several parcels of land hereby demised and will not impound or cause to be impounded any cattle or horses of the Lessors or of their tenants of adjoining lands that may be found on the said lands hereby demised nor hold the Lessors liable for any damage that may be done by the cattle or horses of said Lessors or their tenants of adjoining lands to the lands hereby demised or to anything thereon:



That it will not make or suffer any strip or waste or unlawful, improper or offensive use of said premises or of any improvements thereon, nor, without the consent of the Lessors in writing mortgage or assign this lease nor sublet nor part with the possession of the whole or any part of the said premises;

That it will use the land hereby demised for cultivation only or in furtherance of the cultivation of such parcels thereof as shall be suitable for cultivation and, except as herein demised, shall not exercise any rights over any other parts of the Ahupuaa of Moanalua except rights of way over public roads whether such rights are or are not appurtenant to the lands hereby demised;

That it will not sink any additional wells on any land within the boundaries of the Ahupuaa of Moanalua nor use any water raised on or taken or derived from any such land other than it is now entitled to use without the consent in writing of the Lessors first had and obtained.

That it will from time to time and at all times during the said term well and substantially repair, maintain, amend and keep all buildings and improvements now or hereafter to be built on the parcels of land hereby demised with all necessary reparations and amendments whatsoever;

That it will permit the Lessors or their agents at all times during the term hereby demised to enter the said premises and examine the condition thereof, and survey the same;

That at the end of the said term or other sooner

determination of this lease, it will peaceably deliver up to the Lessors possession of the said demised premises, together with all erections and improvements upon or belonging to the same by whomsoever made, except buildings and machinery, in good repair, order and condition;

Provided, however, that this demise is upon this condition, that if the Lessee shall fail to pay the said rent or any part thereof within thirty (30) days after the same becomes due, whether the same shall or shall not have been demanded, or shall become bankrupt or go into liquidation, or shall fail faithfully to observe or perform any of the covenants or conditions herein contained and on its part to be observed or performed or shall abandon the said premises, the Lessors may at once re-enter the said demised premises or any part thereof in the name of the whole and at their option terminate this lease without service of notice or legal process and without prejudice to any other remedy or right of action for arrears of rent or for any preceding or other breach of contract;

And it is hereby expressly agreed and declared that the acceptance of rent by the Lessors shall not be deemed to be a waiver by **them of any breach** by the Lessee of any covenant herein contained, and that the term "Lessors", in these presents shall include the Lessors, their successors in trust and assigns, and also that the term "Lessee", shall include the Lessee, its successors and permitted assigns;

In witness whereof, the said Lessors as such

Trustees have executed this instrument in quadruplicate on the .... day of ....., 1940, and the said Lessee has likewise caused this instrument to be executed in quadruplicate on the .... day of ....., 1940.

.....  
.....  
.....

Trustees under the Will and of the Estate of Samuel M. Damon, Deceased.

HONOLULU PLANTATION  
COMPANY,

By .....  
Its Attorney-in-fact.

## UNITED STATES EXHIBIT "C"

(Admitted in Evidence 1-14-47)

C. Brewer &amp; Company, Ltd.

Honolulu, Hawaii

May 5, 1941

This Letter No. 578-HTK

Mr. J. Waterhouse,

Mr. E. H. Wodehouse,

Mr. W. Frear,

Mr. J. E. Russell,

Trustees under the Will of Samuel Mills  
Damon, Deceased, Honolulu, Hawaii.

Gentlemen:

Under date of October 18, 1940, the Trustees of the S. M. Damon Estate offered a lease to Honolulu Plantation Company under certain terms as therein set forth, which offer, together with the terms thereof, was accepted on behalf of Honolulu Plantation Company under date of October 21, 1940. It was understood that a formal lease would be thereafter executed.

This is to advise you that in reliance upon such offer and acceptance of said new lease, Honolulu Plantation Company has replanted the cane land in Field 84 and has cleared an additional ten acres of this field not heretofore in cane and is proceeding to plant such new cane land. The company has also completed plans for the further clearing of Field 87 and the planting of the enlarged area in cane. This program, together with programs

in connection with the land subject to the new lease, has been instituted in anticipation that the formal new lease will be executed in due time, and will be forthcoming at your convenience.

Yours very truly,

C. BREWER & COMPANY,  
LIMITED,  
as agents for Honolulu Plantation Company,  
/s/ H. T. KAY,  
Vice-President.

**HTK:FBS**

Rec. at Alexander & Baldwin, May 6/41. Read  
by W.F.F.

(Copy).



## UNITED STATES EXHIBIT "D"

(Admitted in Evidence 1-14-47)

Bishop Trust Company, Limited  
Honolulu, Hawaii

May 12, 1941.

Attn. Mr. H. T. Kay, Vice President

C. Brewer & Co. Ltd.,  
as Agents for Honolulu Plantation Company,  
Honolulu, Hawaii.

Gentlemen:

Re Estate of S. M. Damon.

This will acknowledge receipt of your letter of the 5th instant, addressed to the four Trustees under the Will of Samuel M. Damon, Deceased. Two of these Trustees are at present away from the Territory, but as soon as we can get a majority we will take up the matters mentioned in your letter.

Very truly yours,

/s/ J. WATERHOUSE,  
a Trustee.

bc.h

Mr. Waterhouse:

We will bring Mr. Kay's letter to your attention again when Mr. Wodehouse or Mr. Russell returns to Honolulu.

BISHOP TRUST CO., LTD.  
B. C.,  
Asst. Treasurer.

May 12/1941.

UNITED STATES EXHIBIT "E"

(Admitted in Evidence 1-14-47)

(Copy)

Bishop Trust Company, Limited  
Honolulu, Hawaii

August 15, 1941.

C. Brewer & Company, Ltd.,  
Agent, Honolulu Plantation Company,  
Honolulu, T. H.

Attention: Mr. P. E. Spalding, President

Dear Sirs:

Due to our inability now to lease to the Honolulu Plantation Company certain areas at Moanalua, and your inability to deliver certain areas as a result of the recent federal condemnation proceedings, the Trustees under the Will of Samuel M. Damon now propose to lease for a period of ten years from the expiration of the present lease, or until December 31, 1953, unless there is an earlier determination of the Trust, the following areas, subject to the following terms, conditions and rights of withdrawal:

The land to be leased to comprise fields 82-89 inclusive, except a strip approximately 250 feet deep just mauka of Kamehameha Highway along the entire makai end of field 83, which shall be surrendered at once from the present lease, the plantation railroad to be moved mauka of this strip; excepting also a portion of fields 88 and 89 to a

point opposite "E" Road; the lessors to have the right to withdraw, upon eighteen months' written notice, the remaining area of field 83 prior to December 31, 1945; fields 86, 88 and the remaining portion of 89 up to a point opposite John Rodgers Airport Road, prior to December 31, 1948; and all of field 84 mauka of the ditch, prior to December 31, 1950.

It will be noted that no land makai of Kamehameha Highway is to be included in the proposed new lease.

The minimum rental to be 15 per acre for lands occupied for plantation purposes. Said rental to increase at the rate of 20c per acre per annum for any increase of \$1.00 in the average price of 96° New York raws above \$50, and proportionately for any fraction of an increase of \$1.00, said increase, however, to cease when the price of 96° raws exceeds \$100.

The Plantation to pay the property taxes.

If the present Sugar Act is to continue in its present or a similar form, 75% of the federal payments to be added to the New York basis price to determine the average price of 96° raw sugars which fixes the rental value basis.

All areas not in sugar cane and not used for ditches or railroads may be withdrawn by the Estate's giving sixty days' notice, without penalty to the Estate, including any reduction in rent.

The Damon Estate to have an easement over the roads so as to give proper ingress and egress to the lands mauka of fields 82 and 89, also to have

the privilege of laying water pipes along such roads at such times as the fields have just been harvested in order not interfere with plantation operations.

The lease to include a condemnation clause, hunting and trespassing clause, and strip and waste clause, in form satisfactory to us, together with such other provisions as shall be deemed proper.

We do not concur in some of the provisions which were contained in your former tentative draft, namely, the provision that in case the lessee continues to occupy after the termination of the lease in order to harvest crops the rent be at the fixed rate of \$15 per acre, instead of at the rate hereinabove mention; and the clause on page 5 giving the lessee the option to withdraw certain areas. We think that the covenant on page 6 with reference to cultivation and rights of way would be unnecessary. The surrender clause at the bottom of page 6 should provide that in case buildings shall be removed the lessee shall restore the surface of the land to its original condition.

If these terms are agreeable, please signify acceptance in writing at your earliest convenience, and we will submit a formal draft of lease for your acceptance.

Your very truly,

/s/ JOHN WATERHOUSE,

/s/ E. H. WODEHOUSE,

/s/ JOHN E. RUSSELL,

Trustees, Estate of S. M. Damon.

## UNITED STATES EXHIBIT "F"

(Admitted in Evidence 1-14-47)

C. Brewer and Company  
Limited

December 16, 1941

This Letter No. 1667-HTK

Dec. 18, 1941

(Copy)

S. M. Damon Estate  
c/o Bishop Trust Company  
Honolulu, T. H.

Gentlemen:

Honolulu Plantation Company has been requested by the Military Governor of the Territory of Hawaii, under the authority vested in him, to cooperate in the matter of immediately planting and growing food crops toward the end that the Island of Oahu may become self sustaining during the war. This cooperation has been agreed to by the plantation, but in order to make the same effective, it will be necessary that the plantation's lessors give their consent to the use of any lands leased by them to the plantation for such purposes, releasing the lessee from obligations to pay rent, taxes, and such other lessee obligations which might be affected through such use.

As presently contemplated, several thousand acres now under lease by Honolulu Plantation Company will be used for the growing of food crops, and undoubtedly many of the acres that will be used are those presently devoted to the growing of sugar cane. Fixed and percentage rental provi-



sions, including that relating to gross proceeds should be accordingly suspended until such time in the future as may be agreed upon by the lessor and lessee for the renewal of normal operations. Accordingly, the suspension of lessee obligations requested should be broad enough to cover all or any part of the lands demised. To what extent your lands will be so used cannot be estimated by us at this time, but please be assured that insofar as it may be practicable and within the discretion of your lessee, lands of the respective lessors will be as equitably apportioned as possible to the end that no one lessor will have to bear an unequal share of the burdens imposed.

This request is presently confined to those lands to be diverted to the purposes stated as it is hoped that the plantation will be able to carry on cane growing operations with respect to the remaining lands under such normal schedules as may be possible.

Your immediate cooperation in this respect will be greatly appreciated as every effort is being made to comply with the Military Governor's request as soon as possible.

Yours very truly,

HONOLULU PLANTATION  
COMPANY,

By C. BREWER AND COMPANY,  
LIMITED,

Its Agent,

By H. T. KAY,

Vice President.

## UNITED STATES EXHIBIT "G"

(Admitted in Evidence 1-14-47)

C. Brewer and Company

November 11, 1943.

This Letter No. 9472-CHM  
Refers Your No. N1-13/ Marine  
Camp — N1-13/Marine  
Storage 30276

The Public Works Officer  
Commandant, Navy Number 128  
(one two eight)  
c/o Fleet Post Office

San Francisco, California.

Right of Entry on Two Tracts—74 Acres and  
135 Acres—at Moanalua, Ewa, Oahu, Issued  
by Honolulu Plantation Company

Attention: Capt. G. D. Wetsel (CEC) U.S.N.  
District Public Works Officer

Gentlemen:

This acknowledges receipt of your favor of November 9, 1943, with specified enclosures which we find to be in satisfactory form and for which we thank you.

In connection with the preparation of document for the leasing of these areas, we would indicate that as Honolulu Plantation Company's tenancy

expires on these areas on December 31, 1943, it would be best for you to deal with the Trustees of the S. M. Damon Estate in negotiating the proposed lease.

Very truly yours,

C. BREWER AND COMPANY,  
LIMITED,

/s/ CHAS. H. MERRIAM,  
Manager, Land Department.

CHM:LHM

## UNITED STATES EXHIBIT "H"

(Admitted in Evidence 1-14-47)

C. Brewer and Company, Limited

September 16, 1943.

This Letter No. 9416-CHM

Refers Your No. 24640

Commandant

Fourteenth Naval District

Navy Number 128 (One Two Eight)

c/o Fleet Post Office

San Francisco, California.

Attention: Capt. G. D. Wetsel (CEC) U.S.N.

Request for issuance of Right of Entry by  
Honolulu Plantation Company on 119 acres  
more or less of Moanalua lands, fields 82  
and 83, for use of Navy Department.

Gentlemen:

This acknowledges receipt of your favor of September 11, 1943, with specified enclosure requesting that the above mentioned land be made available by way of right of entry and finally by a lease for the use of the Navy Department on an important Navy installation.

On behalf of Honolulu Plantation Company, your request for right of entry is hereby granted, subject, however, to the reservation by said Company of all damages that may be sustained by said Company through loss of cane crops, through increased costs caused adjacent areas by virtue of

this installation and any other damages that may be sustained.

It is our suggestion that you also gain approval of this right of entry by the land owners — the Trustees of the S. M. Damon Estate.

In the matter of the issuance of a lease of this land for your use, it is our suggestion that you deal directly with the Trustees of the S. M. Damon Estate for such tenancy as may be required by you.

Very truly yours,

C. BREWER & CO., LTD.,

/s/ CHAS. H. MERRIAM,

Manager, Land Department.

CHM:LHM



## UNITED STATES EXHIBIT "I"

(Admitted in Evidence 1-14-47)

C. Brewer and Company, Limited

January 3, 1943

This Letter No. 5701-HTK

Vice-Admiral Robert Lee Ghormley, U.S.N.,  
Commandant, Fourteenth Naval District  
Pearl Harbor, Oahu, T. H.

Dear Admiral Ghormley:

In furtherance of our conversation recently, I desire to present this letter advising you formally of the grave situation that Honolulu Plantation Company finds itself in as a result of the continuous takings by the United States Government of its lands and crops and properties operated in conjunction therewith.

Prior to 1930 and before the institution of initial proceedings for the acquisition of the Company's lands for Army and Navy projects, the Company had been developed into a plantation capable of producing approximately 35,000 tons of raw sugar per annum, and making its refinery, which had a refined sugar capacity of approximately 45,000 to 50,000 tons, independent of other sugar producers. After the recent takings, the Company today is only capable of producing approximately 15,000 to 20,000 tons of raw sugar and consequently has become dependent upon other raw sugar producers for sufficient raw sugar to maintain operation of its 45,000 ton refinery. Although it is now possible

to secure such additional raw sugars necessary to continue operation of the refinery from other producers because of the existing war emergency, the post-war outlook for such outside supplies is wholly indefinite and subject to withdrawal because of contracts with Mainland refineries. The shrinkage in sugar production from approximately 35,000 tons to less than 20,000 tons has been due principally to condemnations by the United States Army and Navy. It is understood that additional takings are contemplated and that it is possible that the greater part, if not all of the area now occupied by the plantation in its production of raw sugar will be taken by the Government before the war has ended. The Company has been informed from time to time by officials of the Government that although the 5th Amendment of the Constitution guarantees every person that he shall not be deprived of his property without due process of law and that it shall not be taken for public use without just compensation, nevertheless, there does not exist under existing statutes and appropriations authority and funds for the payment of compensation reimbursing the Company for the damages suffered by it as an enterprise and business. Consequently, under the existing Federal government method of appraisal and procedure for payment of damages suffered the Company has not received any compensation for the very substantial damage to its enterprise and business.

It is obvious that if these takings continue the Company will shrink to a point where it can no

longer stay in business, leaving it with a huge plant of equipment with very doubtful salvage value to show for the formerly prosperous enterprise capable of earning substantial annual profits. Every effort to keep the plantation going through the conversion of upper hillside lands to the production of sugar cane has been undertaken. The greater part of the monies received by the Company from the condemnation proceedings up to this time have been used to prepare new lands and build the necessary installations, roads, pumps, ditches, reservoirs, pipelines, etc. necessary to operate them. Although new varieties of cane having much greater productivity than those formerly used by the plantation have been of great help in absorbing some of the crop shrinkage, nevertheless it has been impossible to make up the major loss flowing from the taking of the more productive lower lands. This loss in sugar yields is presently averaging around two to three tons of sugar per acre per crop. At the present time the Company knows of no new lands available to replace recent takings or any contemplated new takings. I shall not burden you with details as to how each taking increases the cost of operating that part of the enterprise remaining. Obviously the overhead costs of an enterprise geared to a 35,000 production increases per unit ton of sugar progressively as the production decreases, even though some savings are accomplished in the matter of reductions in personnel, etc. Ultimately a point is reached where the overhead costs, particularly ir fixed

charges, are too heavy for the production obtainable. That is the point we fear has been reached in the case of this Company. The impending death faced by the enterprise is illustrated by the attached statement showing the shrinkage and dislocations caused by these takings and how drastic the effect has been upon the Company's sugar production. You will note that in the data there is reflected a constant endeavor to keep the enterprise going by replacing lands taken by new lands but as graphically illustrated by the figures there were not sufficient new lands available or procurable to replace the large areas taken and as the enterprise was forced to go to higher elevations for its replacements, there was among other dislocations, that of water distribution requiring pumping to much higher elevations at greatly increased costs.

As we appraise the situation there are two ways in which the Company can receive the just compensation guaranteed by the Constitution:

1. For the Navy at this time to purchase Honolulu Plantation Company in its entirety at a price fairly reflecting the earning capacity of the enterprise, assuming there had been no takings.

2. For the Company to appeal to Congress for relief with respect to losses heretofore suffered to its enterprise and for the establishment of machinery by way of appropriate legislation, to compensate for future losses.

In case the second method is pursued it is of pertinent importance that the Company state in its application for relief, the nature and extent of



past takings and of future takings now contemplated by the Navy. The furnishing of any such information will, of course, be considered confidential and will only be used for the purpose stated.

During the many years the Company has been suffering these losses, there has been no failure on its part to cooperate with the government and the armed services whenever the question of national defense arose and it was stated by the armed services that the Company's properties were needed as a part of the defense and war programs. The compensation received so far has only been for crops destroyed. The matter which we have put before you here, however, is one of graver import to the Company. This enterprise has a capital investment of \$5,000,000. Approximately 40% of the earning capacity of this investment has been destroyed through the loss of productive lands to the benefit of the country as a whole. It does not seem equitable that this burden should be placed on the Honolulu Plantation Company alone. Whether intentional or not, the piece-meal methods pursued in the taking of these lands have resulted in the Company being rendered legally defenceless to recover all the damages suffered by it. We sincerely hope that a different course may be adopted in the future and accordingly request that you give immediate and serious attention to the Navy buying the entire enterprise now. If you are unprepared to so recommend at this time, can you advise the Company now of all the possible takings of the Company's properties which are



under consideration or contemplated for the future in order that the Company may institute proper proceedings in application for relief from Congress.

Attached hereto are some statistics showing the reduction of the Company's properties, the efforts to overcome these losses and the increased cost of irrigation operations annually as estimated by the plantation. It seems to us that just compensation should take these factors into consideration now.

Yours very truly,

HONOLULU PLANTATION  
COMPANY,

By /s/ P. E. SPALDING,  
Its Attorney-in-Fact.

HTK:mfl encls.

## HONOLULU PLANTATION COMPANY

Summary of Crops 1928—Nov. 1, 1943

96° Sugar Basis

Year	Plantation Area Under	Crop Area in Acres	Total	Tons 96°	Tons 96°	Age
	Cultiva- tion Jan. 1		Tons 96° Sugar	Sugar per Acre	Sugar per Acre Month	
1928	5615.00	3829.25	37,078.89	9.68	.477	20.3
1929	5568.00	3677.75	34,146.90	9.28	.483	19.3
1930	5541.50	3593.00	33,678.91	9.37	.503	18.6
1931	5493.75	3646.75	31,770.04	8.71	.480	18.1
1932	5540.50	3582.75	33,219.49	9.27	.498	18.7
1933	5549.25	3930.25	32,109.10	8.17	.468	17.5
1934	5524.75	3334.25	24,790.16	7.44	.433	17.2
1935	5398.75	3066.25	28,203.05	9.20	.469	19.6
1936	4772.75	3097.25	29,207.04	9.43	.488	19.3
1937	4837.50	3415.00	29,575.17	8.66	.478	18.1
1938	5074.00	3401.85	27,402.68	8.06	.446	18.0
1939	5252.25	3704.00	28,075.64	7.58	.459	16.5
1940	5153.50	3398.75	26,447.70	7.78	.476	16.6
1941	4876.50	3310.75	25,922.41	7.83	.437	18.0
1942	4466.00	2427.59	17,324.43	7.14	.404	17.5
1943*	3978.00	2287.00	17,664.67	7.72	.377	20.5

\* As of Nov. 1, 1943. Area under cultivation includes 107.25 acres of unirrigated area.

## HONOLULU PLANTATION COMPANY

Summary Cane Area Lost from 1-1-34 to 11-1-43

To Whom	Acres	Year	Acres
U. S. Navy.....	1166.70	1934 .....	134.25
U. S. Army .....	357.67	1935 .....	565.75
Territory of Hawaii .....	145.33	1936 .....	64.78
Damon Estate .....	134.78	1936-37 .....	7.75
Honolulu Plantation Co.....	46.72	1937 .....	20.05
Fallow .....	22.26	1938 .....	9.50
Crop Failure .....	64.61	1939 .....	19.38
McGrew Estate .....	27.84	1940 .....	607.71
Miscellaneous .....	13.75	1941 .....	146.86
		1941-43 .....	67.29
Total.....	2479.66	1942 .....	331.55
		1943 .....	504.79
		Total.....	2479.66

## HONOLULU PLANTATION COMPANY

Cane Area Lost from 1-1-34 to 11-1-43

Field	Acres Lost	Year	To Whom
1	.38	1942	Crop Failure
1	4.35	1942	T. of H.
1	10.66	1942	H. P. Co. Vegetables
1	48.61	1943	U. S. Navy
2	.19	1942	U. S. Army Rd.
2	1.07	1942	H. P. Co. Rd.
3	.19	1942	U. S. Army Rd.
3	8.07	1943	U. S. Navy
4	.25	1936	T. of H. Rd.
4	.60	1940	H. P. Co. Ditch
4	.50	1942	T. of H. Rd.
4	1.17	1943	T. of H. Rd.
4	8.50	1943	Crop Failure
5	.68	1936	T. of H. Rd.
5	.34	1942	T. of H. Rd.
7	10.61	1942	U. S. Army
8	.07	1938	H. P. Co. Rd.
8	.21	1942	H. P. Co. Loading Stat.
9	1.25	1942	U. S. Army
10	.50	1938	H. P. Co. Ditch
11	.58	1938	H. P. Co. Ditch
11	.25	1942	H. P. Co. Loading Stat.
13	.35	1937	H. P. Ditch
13	.90	1942	U. S. Army
13	----	----	-----
14	.39	1937	H. P. Co. Ditch
14	1.00	1942	U. S. Army
15	.05	1939	H. P. Siphon
16	.66	1938	H. P. Co. Ditch
17	.74	1938	H. P. Co. Ditch
18	.50	1938	H. P. Co. Ditch
19	26.22	1943	T. of H.
20	69.97	1943	T. of H.
21	1.40	1942	U. S. Army
22	.49	1937	H. P. Co. Ditch
23	1.07	1937	H. P. Co. Ditch
24	6.40	1937	H. P. Co. Ditch
24	.17	1939	H. P. Co. Pipe Line
24	1.24	1942	U. S. Army
24	1.52	1937	T. of H.

Field	Acres Lost	Year	To Whom
26	.25	1937	H. P. Co. Ditch
26	4.16	1941	U. S. Army
27	.36	1939	H. P. Co. Ditch
28	.30	1937	H. P. Co. Ditch
26	.55	1937	H. P. Co. Ditch
30	.18	1937	H. P. Co. Ditch
30	.75	1940	H. P. Co. Rd.
31	.25	1942	U. S. Army
33	1.25	1937	T. of H.
35	.26	1942	H. P. Co. Rd.
37	1.50	1942	U. S. Army
37	1.50	1943	Crop Failure
38	.81	1941	H. Dowsett
38	13.92	1941	U. S. Army
38	19.91	1942	Crop Failure
38	3.00	1943	Crop Failure
38	9.00	1943	Fallow
40A	2.22	1939	McCandless
41	1.50	1942	U. S. Army
43	.38	1940	H. P. Co. Rd.
45	1.04	1941	U. S. Army
45	1.00	1942	U. S. Army
46	2.00	1937	T. of H.
46	8.00	1940	Fallow
46	4.00	1940	Crop Failure
46	7.79	1941	McGrew
46	6.21	1942	Crop Failure
46	1.00	1942	U. S. Army
47	1.55	1936	United Dredge Co.
47	8.53	1940	McGrew
48	1.27	1936	T. of H.
48	.44	1938	H. P. Co. Hse.
48	.08	1939	H. P. Co. Hse.
48	.93	1940	H. P. Co. Garden (Veg.)
48	11.52	1940	McGrew
48	.17	1942	H. P. Co. Garden (Veg.)
48	11.70	1942	U. S. Army
49	.33	1940	H. P. Co. Loading Stat.
53	1.79	1937	H. P. Co. Camp Site
53	3.43	1938	H. P. Co. Camp Site
53	2.60	1941	U. S. Army
53	.64	1942	U. S. Army

Field	Acres Lost	Year	To Whom
53	.44	1943	Crop Failure
54	1.54	1936	H. P. Co. Hse.
54	.05	1942	U. S. Army
55	8.25	1936	U. S. Army
55	7.75	1936-37	H. P. Co. Camp Site
56	1.06	1937	T. of H.
56	.22	1939	U. S. Navy
56	.08	1943	U. S. Navy
57	.70	1937	T. of H.
57	.92	1942	U. S. Army
57	1.00	1943	Crop Failure
58	1.10	1942	T. of H.
59	3.24	1942	T. of H.
61	1.75	1937	T. of H.
61	.55	1939	U. S. Navy
61	3.36	1942	T. of H.
61	14.71	1943	U. S. Navy
62	17.58	1940	U. S. Navy
62	100.26	1942	U. S. Navy
63	3.27	1943	U. S. Army
65	.25	1941	H. P. Co. Loading Stat.
65	3.59	1942	T. of H.
66	.26	1940	H. P. Co. Shipon
66	1.07	1941	Clarke
67	30.26	1940	U. S. Navy
68	4.39	1940	Clarke
68	10.29	1940	U. S. Navy
68	3.46	1942	Clarke
69	69.93	1940	U. S. Navy
71	2.02	1936	Crop Failure
71	1.00	1942	U. S. Army
71	2.56	1943	U. S. Army
72	67.03	1940	U. S. Navy
73	50.30	1941	U. S. Army
74	1.29	1942	U. S. Army
75	7.36	1942	U. S. Army
77	.99	1938	H. P. Co. Rd.
77	67.29	1941-43	U. S. Navy
79	6.72	1940	U. S. Navy
79	1.50	1942	U. S. Army
79	5.26	1942	H. P. Co. Fallow
79	3.95	1943	U. S. Army



Field	Acres Lost	Year	To Whom
80	15.73	1939	U. S. Navy
81	.25	1938	Standard Dredging
81	50.78	1940	U. S. Navy
81	.98	1943	U. S. Navy
82	.45	1941	U. S. Army
82	.67	1942	T. of H.
82	46.50	1943	U. S. Navy
83	5.67	1942	T. of H.
83	1.00	1942	U. S. Army
83	65.50	1943	U. S. Navy
84	11.54	1942	Crop Failure
84	5.30	1943	Crop Failure
84	1.16	1943	T. of H.
85	3.43	1942	T. of H.
85	84.83	1943	U. S. Navy
86	5.32	1942	T. of H.
86	82.89	1943	U. S. Navy
87	2.77	1943	U. S. Army
87	.81	1938	Crop Failure
88	3.41	1942	U. S. Army
88	31.45	1942	U. S. Navy
88	12.81	1943	U. S. Navy
89	4.76	1941	T. of H.
89	2.51	1942	U. S. Army
89	29.45	1942	U. S. Navy
89	55.75	1934	Damon Estate
90	73.50	1934	Damon Estate
91	5.00	1934	Damon Estate
91	47.75	1941	U. S. Navy
92	40.30	1940	U. S. Navy
92	11.96	1941	U. S. Navy
93	58.27	1940	U. S. Navy
94	61.73	1940	U. S. Navy
95	27.25	1940	U. S. Army
95	26.66	1940	U. S. Navy
96	.97	1936	H. P. Co. Track
96	43.71	1940	U. S. Army
97	84.75	1935	U. S. Army
97 A&B	57.51	1940	U. S. Navy
98	66.50	1935	U. S. Army
99	86.75	1935	U. S. Army
100	18.75	1935	U. S. Army

Field	Acres Lost	Year	To Whom
101	42.50	1935	U. S. Army
102	55.50	1935	U. S. Army
103	85.50	1935	U. S. Army
104	75.00	1935	U. S. Army
105	50.50	1935	U. S. Army
106	28.75	1936	U. S. Army
107	19.50	1936	U. S. Army
107	.53	1938	Damon Estate
107	26.03	1942	U. S. Army
<hr/>			
Total	2479.66		

HONOLULU PLANTATION COMPANY

Summary of New Land Since 1-1-34

Year	Acres
1934 .....	5.11
1935 .....	15.65
1936 .....	147.71
1937 .....	195.36
1938 .....	169.35
1939 .....	43.67
1940 .....	126.16
1941 .....	220.82
1942 .....	3.30
1943 .....	5.82
<hr/>	
Total.....	932.95

HONOLULU PLANTATION COMPANY  
Comparison of Water Distribution—1935 and 1943

Pump	Area		% of Total	
	Jan. 1	Oct. 1		
Dicharge	1935	1943	1935	1943
Above 500'	.....	295.25	....	7.61
500' - 450'	128.25	95.50	2.38	2.46
450' - 300'	724.50	593.50	13.42	15.30
300' - 200'	945.00	954.50	17.50	24.61
200' - 130'	1089.00	940.25	20.17	24.24
130' - 80'	644.25	623.25	11.93	16.07
80'	1867.75	376.50	34.60	9.71
Totals	5398.75	3878.75	100.00	100.00

Note: In 1935 with a total acreage of 5398.75 acres only 33.3% required pumping above 200'.

In 1943 with a total acreage reduced to 3878.75 acres 49.98% required pumping above 200'.

See relative costs hereto attached.

### WATER DISTRIBUTION OF COSTS

Average elevation of Pump Discharges: 1/1/35.....208 feet  
10/1/43.....282 feet

Therefore we are now pumping an average of 74 feet more than in 1935. This would amount to approximately \$2.96 per million gallons.

Estimate of present water needs..... 12,207.12 Million gals. per yr.  
Increase in cost per year.....\$36,133.08

In addition, our man day performance has been considerably lowered due to loss of our flat, easy to irrigate areas:

Average Acres irrigated per man day, 1940..... 4.11  
Average Acres irrigated per man day, Oct. 1943..... 2.33

This is an increase of \$.75 per acre for irrigating.  
Increase in cost per year.....\$34,836.72

### SUMMARY

Increased Water Cost Remaining Area.....\$36,133.08  
Increased Labor Cost for Irrigating..... 34,836.72

Yearly Increase.....\$70,969.80

UNITED STATES EXHIBIT "J"

(Admitted in Evidence 1-14-47)

12 Jan., 1944

Copy

No. 937

C. Brewer and Company, Limited,  
P. O. Box 3470,  
Honolulu, T. H.

Attention: Mr. Philip E. Spalding, Attorney-  
in-fact.

Gentlemen:

Receipt of your letter 5701-HTK, no date, is hereby acknowledged.

The plight of the Honolulu Plantation Company recited therein has been carefully studied. The continued operation of the sole refinery on Oahu is a matter of grave concern to the Navy and Army as the shipping thereby saved to the war effort is of moment. The Navy was supplied eleven million pounds of refined sugar in 1943 by your firm and the estimated requirements for 1944 for the Navy is thirty-three million pounds.

Your decision to operate the sugar refinery of the Honolulu Plantation Company for the duration of the war by purchasing raw sugar from other local producers is received with satisfaction.

Every effort has been exerted by the Navy to taking as little cane producing land on Oahu as possible. The various tracts were largely leased as actual and proved need arose, and the Navy al-

ways gave primary and full consideration to the condition of the growing crops in order to minimize crop damage. Marginal and waste lands were acquired rather than cane areas wherever possible.

The growth of the Navy Yard, Pearl Harbor and its satellite housing and storage activities has forced the conversion of certain adjacent lands to military uses. The geographical location of Honolulu Plantation Company-controlled lands close to the perimeter of Pearl Harbor and bordering the main territorial highway, was the principal factor contributing to its land losses. The principal of acquiring these lands only at the time of pressing need was one of common sense coupled with the determination to cause as little injury to the overall territorial economy as practicable. While the production loss to the Honolulu Plantation Company has been admittedly grave from the Company's viewpoint, I am sure you will agree that no lands or properties connected with the Honolulu Plantation Company were acquired by the Navy for any reason other than military necessity.

It is impossible at this time to state what future takings are in prospect from the present until the end of the war. There is no intention of deviating from the established principle of acquiring only those lands which are needed at the time they are taken, and to no greater extent than the Navy determines will be necessary in the successful prosecution of the war. That there will be more land needed for Naval purposes as the war progresses, is a fair assumption. Exactly where and



whose land will be acquired will have to await the exigencies of the moment.

For the foregoing reasons of policy, I cannot recommend the purchase of the entire properties and lands of the Honolulu Plantation Company nor can I foresee exactly what lands of your Company will be required by the Navy in the future.

Very truly yours,

ROBT. L. GHORMLEY,  
Vice Admiral, U. S. Navy, Commandant, Fourteenth Naval District.

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UNITED STATES EXHIBIT "K"

(Admitted in Evidence 1-14-47)

(Copy)

November 29, 1946

Honolulu Plantation Company, Limited  
c/o C. Brewer & Company, Ltd.  
Honolulu, T. H.

Gentlemen:

In response to your verbal invitation to submit for your consideration an offer to purchase certain of the assets of your Company, please be advised that we are now prepared to offer and do hereby offer you, subject to the conditions hereinafter set out, the sum of \$3,350,000.00, upon receipt of satisfactory conveyances and evidence of title, for all of the real property, improvements, equipment and

supplies on hand, owned or held by Honolulu Plantation Company, Limited, including, without limitation on the generality of the foregoing, all land, leaseholds, buildings and other structures, growing crops, livestock, water and water rights, pumps, wells, generators, all water and electric distribution systems, all trucks, tractors and other plantation equipment and machinery, the sugar mill and sugar refinery, including equipment and supplies; provided, however, that we will pay, in addition to the above amount, the actual cost, as shown by your books, of factory supplies on hand or in transit, of sugar in process of manufacture and of molasses stocks on hand, at date of transfer.

The above price is also subject to final adjustments on account of:

Unexpired insurance premiums.

Prepaid rents.

Other prepaid items.

Accrued accident compensation.

Accrued rentals.

Other accrued expense, if any, not liquidated by Honolulu Plantation Company, Limited.

The basis of said adjustments shall be the books and records of your Company, subject to audit by us. It is understood that the purchaser will assume no obligations in connection with compensation, bonuses or pensions due or payable to the plantation personnel, on account of or arising from services performed prior to date of transfer of the properties to Oahu Sugar Company, Limited (except settlements with cultivation or irrigation con-

tractors on unharvested cane); that all 1946 taxes will be paid by the seller, and that the purchaser be held harmless against all claims for damages of whatever nature arising from or by virtue of the ownership or operation of the property involved prior to date of transfer.

As you know, California & Hawaiian Sugar Refining Corporation, Limited has made an offer to Oahu Sugar Company, Limited to purchase the Mill and Refinery and the sites thereof, upon their acquisition by Oahu from you. That transaction will require the approval of the Plantations and Trustees concerned, in accordance with the provisions of the Cooperative Agreement, dated November 1, 1938, and Oahu's offer to purchase from you the properties hereinbefore mentioned, is subject to and contingent upon the execution of a firm agreement between Oahu and California & Hawaiian Sugar Refining Corporation, Limited for the purchase by the latter of the Mill, Refinery and sites therefor, and the approval of the Plantations and Trustees to such agreement and the transfer of title to California & Hawaiian Sugar Refining Corporation, Limited thereunder.

The foregoing offer is made on the assumption that the properties will be delivered to Oahu Sugar Company, Limited on December 31, 1946 and on the further assumption that in the interim period growing cane will be cared for according to the usual practices of good husbandry, and that stocks of plantation supplies shall be depleted only in accordance with normal plantation uses and prac-

tices. Failure to meet these assumptions shall entitle us to either withdraw or revise this offer.

Very truly yours,

OAHU SUGAR COMPANY,  
LIMITED,

By /s/ H. A. WALKER,  
President,

By /s/ S. M. LOWREY,  
Treasurer.

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UNITED STATES EXHIBIT "L"

(Admitted in Evidence 1-14-47)

(Copy)

December 3, 1946

Honolulu Plantation Co., Ltd.,  
c/o C. Brewer & Co., Ltd.,

Gentlemen:

Referring to our letter of November 29th, 1946, conveying an offer to purchase certain of the assets of your Company, we herewith supplement said offer as follows:

Should your Company enter into contracts with pineapple canners in the Territory of Hawaii for their 1947 refined sugar requirements on substantially the same terms and conditions of sale as in 1946, we agree to assume and perform such contracts, in the event said offer to purchase is accepted.

We also hereby amend our abovementioned offer so that the delivery date referred to in the last paragraph thereof shall read "January 1st, 1947" instead of "December 31st, 1946".

Yours very truly,

OAHU SUGAR COMPANY,  
LIMITED,

By /s/ H. A. WALKER,  
President,  
and

By /s/ S. M. LOWREY,  
Treasurer.

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UNITED STATES EXHIBIT "M"

(Admitted in Evidence 1-14-47)

(Copy)

December 6, 1946

Honolulu Plantation Company,  
c/o C. Brewer & Co., Ltd.,  
Honolulu, T. H.

Gentlemen:

We confirm our cable of today reading as follows:

"Referring our letter November 29th offering certain assets of your company we hereby increase price offered in first paragraph to three million seven hundred fifty thousand dollars will confirm by letter".

The sum of \$3,350,000.00 mentioned in the first



paragraph of our later of November 29th, 1946, in which we offered to purchase certain of the assets of your Company, is hereby increased to \$3,750,000.00.

Yours very truly,

OAHU SUGAR COMPANY,  
LIMITED,

By /s/ H. A. W.,  
Its President,  
and

By /s/ S. M. L.,  
Its Treasurer.

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UNITED STATES EXHIBIT N-1

(Admitted in Evidence 1-14-47)

C. Brewer and Company

January 1, 1947

Oahu Sugar Company, Limited  
c/o American Factors, Limited  
Honolulu, T. H.

Gentlemen:

This will acknowledge receipt of your letters dated November 29, 1946, December 3, 1946, and December 6, 1946, containing an offer to purchase certain described properties from Honolulu Plantation Co. Under the authority vested in the undersigned in a resolution duly adopted by the Directors of Honolulu Plantation Company in meeting held December 6,

1946, and approved by the stockholders of the Company in meeting held December 23, 1946, your offer is hereby accepted. It is understood that the terms of the agreement as consummated by your offer and this acceptance are those terms set forth in your said letters of November 29, 1946, December 3, 1946 and December 6, 1946, true copies of which are hereto attached and by reference made a part hereof. Copy of said resolution is likewise attached.

It is further understood that this agreement shall become effective and binding upon the parties as of this date, January 1, 1947. Delivery of the requisite documents of conveyance and other documents necessary to evidence the transfer of title shall be made by the seller as soon as the same may be conveniently prepared.

Payment for the properties shall be made as follows:

1. On January 2, 1947 the sum of \$750,000 on account of the purchase price of \$3,750,000.

2. On January 2, 1947 an amount in accordance with bills of sale to be delivered by Honolulu Plantation Company for—

- a. Inventory of factory supplies.
- b. Raw sugar in process.
- c. Raw sugar on hand.
- d. Molasses on hand.
- e. Such other items if any herein sold but not included in the purchase price of \$3,750,000.00.

3. Upon delivery of deed and other requisite documents of conveyance for the approximate

twenty-one acres, (specified as the mill site), and all erections, machinery, equipment and movable property thereon, the sum of \$1,000,000 on account of the said purchase price.

4. Upon delivery of deeds for the remaining fee simple land owned by Honolulu Plantation Company, together with all erections, machinery and improvements thereon, the sum of \$1,000,000 on account of the said purchase price.

5. Upon delivery of the assignments for the leaseholds held by Honolulu Plantation Company, together with the requisite documents conveying the growing crops and all right, title and interest held by the lessee in the improvements on the leased lands, the sum of \$1,000,000 as final payment of said purchase price.

6. Adjustment of all prepaid items to be made promptly upon their determination.

It is the understanding of Honolulu Plantation Company that the properties subject to the sale agreed upon are those generally described in your said letters of November 29, 1946, December 3, 1946 and December 6, 1946 and the Company's good will, trade names, brands and marks with all registered and patented rights thereto appertaining to the Company's refinery business specifically included per your oral request, but excluding of course those items of property, tangible and intangible, owned and held by Honolulu Plantation Company not reasonably coming within the classification of the properties enumerated and the intent of the parties. In this connection it is the further

understanding of Honolulu Plantation Company that in the assignment of its leases specific reservation will be made protecting the assignor in its prosecution of claims against the Federal Government for damages heretofore sustained by it due to condemnation takings.

Very truly yours,

HONOLULU PLANTATION  
COMPANY,

By P. E. SPALDING,

Its Vice President, acting under the authority of the Resolution of the Directors dated December 6, 1946, and approved by the stockholders December 23, 1946.

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UNITED STATES EXHIBIT N-2

(Admitted in Evidence 1-14-47)

RESOLUTION AUTHORIZING SALE OF  
PROPERTIES

(Copy)

Whereas, this corporation, Honolulu Plantation Company, has received an offer from Oahu Sugar Co., Ltd. to purchase this corporation's mill, plantation and related properties for the sum of \$3,750,000.00 and to purchase at cost all factory supplies and sugar and molasses stocks on hand, all as of January 1, 1947; and

Whereas, said offer has been presented to this meeting of the Board of Directors:

Now, Therefore, Be It Resolved, That the officers of this corporation, or any of them, be and are hereby authorized and empowered, upon obtaining the approval of this resolution by the vote or written consent of the holders of a majority of the outstanding shares of this corporation, to sell said properties and assets at the price and on the terms set forth in said offer, with such modifications therein as said officers may approve, except that the price shall be approximately that contained in said offer; and

Be It Further Resolved, That the execution by said officers, or any of them of the necessary documents to effectuate said sale shall constitute evidence of approval of the terms of said sale by the officers of this corporation for all purposes hereof; and

Be It Further Resolved, that said officers, or any of them, be and they are hereby authorized and empowered for and on behalf of this corporation to do and perform all acts and things necessary or desirable to effectuate said sale and to carry out the purposes of this resolution.



[Endorsed]: No. 12023. United States Court of Appeals for the Ninth Circuit. United States of America, Appellant, vs. Honolulu Plantation Company, Appellee, and Honolulu Plantation Company, Appellant, vs. United States of America, Appellee. Transcript of Record. Upon Appeal from the District Court of the United States for the District of Hawaii.

Filed August 14, 1948.

/s/ PAUL P. O'BRIEN,

Clerk of the United States Circuit Court of Appeals  
for the Ninth Circuit.

In the United States Court of Appeals  
for the Ninth Circuit

No. 12023

UNITED STATES OF AMERICA,

Appellant,

vs.

HONOLULU PLANTATION CO.,

Appellee.

and

HONOLULU PLANTATION CO.,

Appellant,

vs.

UNITED STATES OF AMERICA,

Appellee.

ORDER EXTENDING TIME TO FILE TRAN-  
SCRIPT OF RECORD AND DOCKET  
CAUSE

Upon application of Mr. A. Devitt Vanech, Assistant United States Attorney General, counsel for appellant United States of America in above cause, and good cause therefor appearing, It Is Ordered that the time within which the certified transcript of record on the appeals taken herein may be filed and cause docketed in this court be, and hereby is extended to and including June 5, 1948.

/s/ WILLIAM DENMAN,

United States Circuit Judge

Dated: San Francisco, Calif., April 26, 1948.

[Endorsed]: Filed April 26, 1948. Paul P. O'Brien.  
Clerk.

[Title of U. S. Court of Appeals and Cause.]

ORDER EXTENDING TIME TO FILE TRAN-  
SCRIPT OF RECORD AND DOCKET  
CAUSE

Upon application of Mr. A. Devitt Vanech, Assistant United States Attorney, counsel for appellant United States of America in above cause, and good cause therefor appearing, It Is Ordered that the time within which the certified transcript of record on the appeals taken herein may be filed and cause docketed in this court be, and hereby is extended to and including September 7, 1948.

/s/ FRANCIS A. GARRECHT,  
Senior United States Circuit Judge.

Dated: San Francisco, Calif., May 14, 1948.

[Endorsed]: Filed May 14, 1948. Paul P. O'Brien,  
Clerk.

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[Title of U. S. Court of Appeals and Cause.]

STATEMENT OF POINTS AND DESIGNA-  
TION OF THE PORTIONS OF THE RECORD  
TO BE PRINTED

The United States of America, appellant in the above-entitled cause, adopts the statement of points filed in the District Court as the statement of points to be relied upon in this Court, and desires that of the record as filed by it and certified there should be printed everything but the "Record of Proceedings at the trial" (fourth item from the bottom of page

7 of the designation of the record filed in the District Court). The United States of America designates for printing that part of the "Record of Proceedings at the trial" which begins at page 258 of the type-written transcript and ends at the close of the trial, containing the testimony of Stafford L. Austin, George E. Schmutz, Charles Campbell Crozier and Philip E. Spalding.

/s/ A. DEVITT VANECH,  
Assistant Attorney General.

/s/ JOHN F. COTTER,  
Attorney, Department of Justice  
Washington, D. C.

[Endorsed]: Filed September 13, 1948. Paul P. O'Brien, Clerk.

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[Title of U. S. Court of Appeals and Cause.]

STATEMENT OF POINTS AND DESIGNA-  
TION OF ADDITIONAL PORTIONS OF  
THE RECORD TO BE PRINTED

Honolulu Plantation Company, cross-appellant and appellee in the above entitled cause, adopts the statement of points filed in the District Court as the statement of points to be relied upon in this Court, and designaes the following matters to be printed in addition to the matters designated by appellant:

1. Honolulu Plantation Company's Notice of Cross-Appeal.

2. Statement of Points on Which Cross-Appellant Intends to Rely.

3. Government's Order Extending Time to Docket Record on Appeal.

4. Honolulu Plantation Company's Order Extending Time to Docket Record on Appeal.

5. Designation of the above matters.

\* \* \* \*

Dated: Honolulu, T. H., September 16, 1948.

/s/ C. NILS TAVARES,

Attorney for Honolulu Plantation Company.

[Endorsed]: Filed September 20, 1948. Paul P. O'Brien, Clerk.

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[Title of U. S. Court of Appeals and Cause.]

### STIPULATION AND APPLICATION

It Is Hereby Stipulated by and between the parties hereto that this application be made to the Court for an order relieving said parties from printing or reproducing Exhibits Nos. 1, 2, 2-A, 2-B, 2-C, 3 and 8 of Honolulu Plantation Company, defendant in the trial of this cause in the District Court, and hereby requesting that the Court consider the said Exhibits in their original form without reproduction.

This application is made pursuant to Rule 19 of the Ninth Circuit Court of Appeals because said Exhibits are maps not of a printable type.

This application is based on the record filed herein



and on the affidavit of C. Nils Tavares, attorney for Honolulu Plantation Company, attached hereto.

Dated: Honolulu, T. H., . . . . ., 1948.

/s/ A. DEVITT VANECH,  
Assistant Attorney General of the United States of  
America.

/s/ JOHN F. COTTER,  
Attorneys for United States of America, Cross-Appellee and Appellant.

/s/ C. NILS TAVARES,  
Attorneys for Honolulu Plantation Company, Cross-Appellant and Appellee.

So Ordered:

/s/ CLIFTON MATHEWS,  
Judge, U. S. Court of Appeals for the Ninth Circuit.

### AFFIDAVIT

Territory of Hawaii,  
City and County of Honolulu—ss.

C. Nils Tavares, being first duly sworn, on oath deposes and says:

That he is the attorney for the Honolulu Plantation Company, cross-appellant and appellee herein, and that he makes this affidavit in support of an application for an order of the Court relieving the parties from printing or reproducing Honolulu Plantation Company Exhibits Nos. 1, 2, 2-A, 2-B, 2-C, 3 and 8 to which it is attached;

That said Exhibits are maps of an unprintable

type and for that reason may not be designated by cross-appellant and appellee herein to be printed as part of the record;

That it is necessary that said Exhibits be considered by the Court in its determination of this cause; and that unless said application be granted and the parties hereto relieved from printing or reproducing said Exhibits and the Exhibits considered by the Court in their original form without reproduction, said cross-appellant and appellee will be seriously prejudiced upon the trial of this cause.

Further affiant sayeth not.

/s/ C. NILS TAVARES.

Subscribed and sworn to before me this 16th day of September, 1948.

(Seal) /s/ MAIZIE M. JOINER,  
Notary Public, First Judicial Circuit, Territory of  
Hawaii.

My commission expires Jan. 19, 1952.

[Endorsed]: Filed September 27, 1948. Paul P.  
O'Brien, Clerk.

